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ELECTION COMMISSION, INDIA

New Delhi, 14th March 1956

NOTIFICATION

**S.R.O. 775.**—WHEREAS the Election of Shri Rajeshwar Singh as a Member of the Uttar Pradesh Legislative Assembly from the Badaun (South West) Legislative Assembly constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Shri Krishna S/o Shri Shri Narain, Resident of Shrinarayanganj, Ujhani, Distt. Badaun:

And Whereas the Election Tribunal, appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order to the Commission;

Now Therefore, in pursuance of the provision of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL BAREILLY

PRESENT

Sri G. M. Frank Agarwal, H.J.S., *Chairman*

Sri H. P. Varshni  
Sri J. K. Kapoor } *Members.*

ELECTION PETITION No. 31 OF 1954

Badaun (South-West) Constituency of the Uttar Pradesh, Legislative Assembly.

Sri Shri Krishna, son of Sri Shri Narain, resident of Shri Narainganj, Ujhani, District Badaun (Congress)—*Petitioner.*

*Versus*

1. Sri Rajeshwar Singh, son of Chaudhri Maikoo Mal, r/o. village Mudha, Pargana Salimpur, Teshil Dataganj, District Badaun (P.S.P.).
  2. Sri Narottam Singh, son of Sri Kedar Singh, r/o. village Piprol, Pargana Ujhani, District Badaun.
  3. Sri Harish Chandra Goel, son of Sri Shri Narain, r/o. Ashok Bhawan, Ujhani, District Badaun—*Respondents.*
- Sri Banwari Lal Agarwal Advocate and Sri Harish Chandra Vakil, counsel for the petitioner.

Sri Jia Ram Saksena, Advocate and Sri Prem Bahadur Saksena Vakil,  
counsel for respondent No. 1.

Respondents Nos. 2 and 3—*ex parte*.

The judgment of the Tribunal was delivered by Sri J. K. Kapoor, Member.

### JUDGMENT

This is an election petition under section 81 of the Representation of the People Act, XLIII of 1951 (here-in-after referred to as "the Act") by Sri Shri Krishna (Congress) calling in question the election of respondent No. 1, Sri Rajeshwar Singh (Praja Socialist Party), to the Uttar Pradesh Legislative Assembly from the Badaun (South-West) Constituency in the bye-election held on 26th September, 1954 for the vacancy caused by the death of the sitting Member, the late Sri Tulsi Ram.

The relevant facts, not in dispute, are that the petitioner and the respondents were duly nominated candidates for this bye-election. The respondent No. 3 withdrew from the contest within the time prescribed by law, but respondent No. 2 announced his withdrawal after the prescribed date, and therefore some votes were cast in his favour also. As a result of the counting done on 28th September, 1954 at Badaun, the respondent No. 1 was declared duly elected, the declaration of his election being published in the Gazette Extraordinary of Uttar Pradesh, dated 1st October, 1954. The valid votes secured by the petitioner and the respondents were as shown below:—

Sri Rajeshwar Singh (respondent No. 1)	..	20,982.
Sri Shri Krishna (petitioner)	..	17,660.
Sri Narotam Singh (respondent No. 2)	..	752.

The petitioner, who thus lost the election to respondent No. 1 by a margin of 3,322 votes, thereafter, presented this petition bearing date November 27, 1954, to the Election Commission of India, New Delhi, on 30th November, 1954, challenging the election of respondent No. 1 on grounds of bribery, obtaining and procuring assistance of Government servants, hiring and procuring motor vehicles for the conveyance of electors on the polling day, abetting and procuring personation, non-compliance with provisions of Rule 61-A of the U.P. Panchayet Raj Act, and the making of false declaration and Return of election expenses as set out in Paras 5(a) to (f) of the Petition, and lists I to VI of the List of particulars and more fully dealt with in our findings on the issues framed in the case. It was further contended by the petitioner that the result of the election had been materially affected by the non-compliance with the provisions of Rule 61-A of the U.P. Panchayet Raj Act and by the false Return and verification of election expenses, and the election of respondent No. 1 was void on account of the corrupt practices mentioned above. It was consequently prayed that the election of respondent No. 1 be declared void and he be further disqualified under section 140 of the Act on account of the corrupt and illegal practices mentioned above.

In his written-statement, dated 22nd April, 1955, the respondent No. 1 categorically denied all the allegations of the petitioner and further averred that the petition was not maintainable, being not verified in accordance with law and the particulars given in the list being too vague, general and incomplete. It was also stressed that the election of respondent No. 1 was fair and free from all corrupt practices and irregularities and respondent No. 1 took all reasonable means and care and gave all necessary directions and orders to his workers to prevent the commission of corrupt or illegal practices at his election. In the end it was submitted that the petition was liable to be dismissed with costs.

On the averments made by the petitioner in his petition and the respondent No. 1 in his written-statement the following 12 issues were framed by the tribunal, issue No. 9(b) being framed specifically at the instance of the learned counsel for the respondent No. 1.

### ISSUES

1. Is the petition and the list of particulars not verified according to law? If so, is the petition not maintainable?

2. Are the particulars given in the lists I to VI (except No. IV) too vague, general and incomplete? If so, is the petition not maintainable for this reason also?

3. Was Sri Prakash Chandra Sharma *de facto* agent of the respondent No. 1, and is the respondent No. 1 guilty of bribery as alleged in Para 5(a) of the petition and list No. I of particulars?

4. Did the respondent No. 1 himself and through his agents Brij Ballabh of Bisoli and Qamar Uddin of Ujhani obtain and procure the assistance for the furtherance of the prospects of his election from persons serving under the Government of India and Government of Uttar Pradesh as alleged in Para 5(b) of the petition and list II of the particulars? If so, what is its effect?

5. Was Sardar Taran Singh the agent of the respondent No. 1 and did the latter himself and through Sardar Taran Singh hire and procure motor vehicles for the conveyance of the electors to and from Polling Stations as alleged in para 5(c) of the petition and List III of particulars. If so, what is its effect?

6. Did Nawab Singh of Kachla work as an agent of respondent No. 1 and did the latter abet and procure the application by one Ram Lal for ballot paper in the name of his father Tursi through the said Nawab Singh of Kachla as alleged in Para 5(d) of the petition and list IV of the particulars? If so, what is its effect?

7. (a) Did the Sarpanch and Panches of Panchayati Adalats mentioned in List V work and canvass for respondent No. 1 against the provision of Rule 61-A of Panchayet Raj Act as alleged in Para 5(e) of the petition?

(b) Has the result of the election been materially affected by the non-compliance of this Rule?

8. Is Rule 61-A of the Panchayet Raj Act *ultra vires* of the State Government as alleged in Para 7 of the written-statement of respondent No. 1?

9. (a) Are the return of election expenses filed by the respondent No. 1 and the declaration verifying it false in material particulars as detailed in Para 5(f) of the petition and List VI of particulars? If so, did it materially effect the result of the election?

(b). Can the filing of incorrect return of election expenses not have any effect on the result of the election? If so, its effect (framed specifically at the instance of the respondent's counsel)?

10. Did respondent No. 1 take all reasonable means and care and did he give all necessary directions and orders for his workers to prevent the commission of corrupt or illegal practices at his election? If so, what is its effect?

11. Is the election of respondent No. 1 void and liable to be set aside on account of the corrupt practices mentioned in the petition, as alleged by the petitioner?

12. To what relief, if any, is the petitioner entitled?

Altogether the petitioner examined 60 witnesses including himself and filed as many as 177 documents marked Exs. 1 to 177. The respondent No. 1 examined 71 witnesses including himself and filed 39 documents, marked Exs. A-1 to A-39. Evidence extending over 245 pages of typed foolscap was recorded by the Tribunal.

## FINDINGS

### Issue No. 1

This petition which consists of seven paragraphs is signed and verified at the end in the following manner:—

"I, Sri Krishna, the above-named petitioner, do hereby verify the contents of the paragraphs 1 to 4 and 6 of the petition are true to my knowledge and those of 5 and 7 are believed to be true on information received. Verified and signed here at Ujhani on the 27th of November 1954.

UJHANI,

November 27, 1954.

(Sd.) Sri Krishna, petitioner."

Similarly, all the six lists of particulars, except No. II, in which the words "by me" are missing, are verified in the following manner:—

"I, Sri Krishna, petitioner, verify that the contents of the above lists are believed to be true by me on information received. Signed and verified here on the 27th day of November 1954.

UJHANI,

November 27, 1954.

(Sd.) Sri Krishna, petitioner."

These verifications are in strict compliance with Order VI Rule 15(2) and (3) of the Code of Civil Procedure, 1908, Act V of 1908, which, by force of section 83(1) and (2) of the Act applies to election petitions.

Order VI Rule 15(2) and (3) C.P.C. provides that:—

- (2) the person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true;
- (3) the verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

On behalf of the respondent No. 1 it is argued that these verifications are not as required by law, but except for the interchange of some words here and there the learned counsel was not able to point out specifically in what manner these verifications violated the spirit or the letter of the law. On the contrary it was noticed by the Tribunal that the written-statement filed by the respondent himself did not confirm to the principles enunciated above in as much as there was in the end a general verification of the contents of all the paragraphs by respondent No. 1 without specifying which paragraph he verified on his own knowledge and which on information received and believed by him to be true. However, in the exercise of its discretion the Tribunal permitted the respondent No. 1 to amend his written-statement by making its proper verification, and thereafter the trial of the petition continued in the ordinary way. Slight omission or defect in verification of pleadings is only an irregularity curable by amendment and not a ground for their summary rejection. Under the C.P.C. it is well-settled that a mistake in verification is not such for which a pleading is liable to be summarily rejected. The opposite party is required to object to such a mistake at the earliest opportunity and such mistakes can be rectified by permission of the Court (I.L.R. 39 Allahabad 343; I.L.R. 54 Allahabad 57 and I.L.R. 22 Allahabad 55). We, therefore, hold that the law has been substantially complied with by the petitioner in the verification of his petition and all the six lists of particulars, and the petition is maintainable.

#### *Issue No. 2.*

In lists Nos. I, II, III and VI, the petitioner has given particulars of the corrupt practices alleged by him to have been committed by or on behalf of the respondent No. 1 and in list V particulars of the Panches and Sarpanches, who are alleged to have canvassed and acted as Polling Agents of respondent No. 1 in violation of Rule 61-A of the U.P. Panchayet Raj Act. It is pleaded on behalf of respondent No. 1 that the petition is not maintainable by reason of these particulars being too vague, general and incomplete. For instance, it is pointed out by respondent No. 1 that in these lists the names and descriptions of the persons alleged to have been bribed, or of the voters alleged to have been conveyed in motor-vehicles, or to have been canvassed by the Government servants or to have acted as Polling Agents of respondent No. 1, and of "many items" in the Return of election expenses are not noted. This is no doubt correct to a certain extent. Considering, however, the general and widespread nature of these corrupt practices alleged to have been committed throughout the whole Constituency or in major sectors thereof by or on behalf of respondent No. 1, it would have indeed been too much to ask or order the petitioner to give a complete list of such persons whose number may be legion. It would be impracticable for the petitioner to do so and unreasonable for the Tribunal to order the petitioner to give such lists. However, in order to safeguard that no surprise may be sprung upon the respondent No. 1 or cause any embarrassment to him during the trial, and to avoid a "roving and rambling inquisition" in the words of the Lordships of the Supreme Court (reported in A.I.R. 1955 (S.C.) 610 at page 611, in the case of Bhika Ji Kesheo Joshi and another appellant *versus* Brij Lal Nand Lal Biyani and other respondents), the petitioner has under the orders and directions of the Tribunal given in the statement of his learned counsel made under Order X C.P.C. on 3rd June, 1955 and in list dated 4th June 1955 (Paper No. 69a) such further and better particulars in regard to the matters referred to in these lists as were in the opinion of the Tribunal necessary for the purpose of ensuring a fair and effectual trial of this petition and to the extent to which they could reasonably be given in the peculiar circumstances of the case. It is within the power of the Tribunal under section 33(3) to order better and further particulars to be furnished, whenever it thinks necessary and the Tribunal was not bound to dismiss the petition. The respondent No. 1 availed the opportunity afforded to him by the Tribunal and gave a further reply to the further and better particulars supplied by the petitioner by filing an additional statement in writing on 26th July, 1955 (Paper No. 98a). It is a principle of the Law of Pleadings that a party can always ask

for further and better particulars if a particular pleading is deficient in that respect (Order VI Rule 5 C.P.C., I.L.R. 45 Allahabad 624). It was held by the Supreme Court in the case of Bhika Ji above quoted (A.I.R. 1955, 610) that—

"in the case of a petition under section 80, where the enumeration of corrupt practices committed by the respondent is vague, except for one of them, the Tribunal when dealing with the matter in the early stages should not dismiss the application. It should exercise its power and call for better particulars. On non-compliance therewith, it should order a striking out of such of the charges which remained vague and call upon the petitioner to substantiate the allegations in respect of those which were reasonably specific. The order of the Tribunal in dismissing the petition outright will be clearly erroneous."

We, therefore, hold that the particulars given in the lists appended to the petition supported by more and further particulars given on 3rd and 4th June 1955 by the petitioner at the trial are sufficient and not too vague and general as to warrant the dismissal of the petition. We therefore, decide this issue in favour of the petitioner and against the respondent No. 1.

### Issue No. 3

Before embarking upon a detailed discussion of this and other issues on corrupt practices, two basic principles of the law of Election may be borne in mind. First, that purity of elections has got to be maintained at all costs and under all circumstances and any attempt to secure success at election by unfair or foul means should be ruthlessly suppressed. Crooked and illegal methods employed by any candidate, his workers or agents must be suitably dealt with and sternly put down by enforcing strictly the law of election. No quarter is to be given to the perpetrators of corrupt practices and illegalities and no Tribunal should hesitate to condemn them in most unmistakable and unambiguous terms so that public conscience may be roused to the necessity of free and fair election which is the bed rock of democracy.

Next, that apart from their seriousness and wide repercussions, the implications inherent in such charges are of very grave importance bringing as they do in their trail not only the setting aside of the election and declaring it void but also entailing disqualification for Membership for a number of years under section 140 of the Act in addition to exposing the person so charged to criminal prosecution under Chapter IX-A of the I.P.C. It has, therefore, been held in numerous cases, both in the past and under the existing law, that allegations about commission of corrupt practices like those enumerated in sections 123 and 124 of the Act, are of quasi-criminal nature and to prove those allegations almost the same standard of proof will be required as in a criminal case against the accused. Further, that the burden of proof, which never shifts, lies on the petitioner and in case of doubt the benefit should go to the respondent as it goes to an accused in a criminal case. Also that the statement of an accomplice will need corroboration before it can be the basis of a finding in favour of any corrupt practices.

Now, the charge of bribery against respondent No. 1 in this particular case as embodied in Para 5(a) of the petition supplemented by List I of Particulars is simply this:—

"That one Sri Prakash Chandra Sharma, who was *de facto* agent of respondent No. 1 toured the whole Constituency on 24th 25th and 26th September 1954 and distributed biris, cigarettes, gram and gur to be distributed to the voters for the purpose of inducing them to cast vote for respondent No. 1."

These allegations, if clearly established, would certainly amount to bribery which is a major corrupt practice as laid down in section 123(1) of the Act which sub-section is comprehensive enough to embrace within its wide sweep any offer by a candidate of his agent or by any other person with the connivance of a candidate or his agent, of any gratification, whether pecuniary or otherwise, and in forms of entertainments to any person whomsoever, with the object, directly or indirectly of inducing an elector to vote or to refrain from voting at an election.

This charge, on the face of it, was rather vague and indefinite as was also contended by respondent No. 1. It was not the case of the petitioner that Prakash Chandra himself distributed this stuff amongst the voters on the alleged dates but that he gave it to some other persons to be distributed amongst the voters of the Constituency. Names of the voters who were alleged to have been so bribed or

of the persons through whom Prakash Chandra offered this bribe were not given in the petition or in the list of particulars accompanying it. There might be some excuse for the petitioner in not giving a complete list of such voters on account of their number and the nature of the charge permeating the whole Constituency, but there could be no justification for him in not disclosing in his petition or in the list of particulars, names and other particulars of all these persons through whom Prakash Chandra distributed biris, cigarettes, gram and gur to the voters as an inducement to cast their votes in favour of respondent No. 1. The Tribunal, however, did not think it proper to dismiss the petition outright as prayed by respondent No. 1, but in the exercise of the discretion vested in it under section 83(3) of the Act called upon the petitioner to supply such further and better particulars in this regard as the circumstances of the case reasonably required so that the respondent No. 1 may not be handicapped or prejudiced in any way in meeting this charge upon the trial of the petition.

Both in the verification of his pleading and in his oral statement before the Tribunal, the petitioner has admitted that he had no personal knowledge of the commission of this corrupt practice, and that the entire allegations were based upon information supplied to him by his workers, supporters and sympathisers, one or two days after the result of the election had been announced which information, he said, he believed to be true but did not make any attempt to verify. He has also admitted that after the finalisation of the nomination paper, which should have been more than 30 days before the date of the poll (*vide* section 30 of the Act) he had toured the Constituency in his own car almost on all those intervening days including the 24th, the 25th and the 26th September 1954, but did not get any information on any of those days that Parkash Chander had been round the villages and had distributed biris, cigarettes, gur and gram to the voters in the villages.

The learned counsel for the petitioner, however, in the statement made under Order X C.P.C. on 3rd June 1955 gave by way of further and better particulars, the names of 17 such persons through whom Parkash Chander was alleged to have distributed biris, cigarettes, gur and gram throughout the whole Constituency. To these 17 names 12 more were added on 4th June 1955 with list, paper No. 69a and finally on 19th August 1955 in the last lap of his evidence the petitioner in his cross-examination disclosed two more names, *viz.* Kedar Singh of Sanjerpur and Qamarul Hassan of Ramzanpur as the persons through whom Prakash Chander distributed this stuff. Out of these 31 persons, only one, namely P.W. 7 Ram Singh of Sanjerpur has been produced by the petitioner. On the other hand, at least six of them, namely, R.W. 17 Rahim Bux of Ujhani, R.Ws. 27, 42 and 43, Qamarul Hassan, Fakherul Hasan and Faizul Hasan of Ramzanpur, R.W. 30 Lakhan Singh of Husainpur and R.W. 31 Nawab Singh of Kachla, have deposed against him and for the respondent No. 1. Further amongst his numerous informers, the petitioner has, for this particular charge, named seven other persons, *viz.* (1) Nawab Singh of Hasainpur, (2) Babu Ram of Sanjerpur, (3) Zamir Ahmad of Ramzanpur, (4) Pritam Singh of Rauli, (5) Naipal Singh of Kachla, (6) Ughan Singh of Fatehpur and (7) Misri Lal of Dahemo. According to the petitioner, these persons told him some of the places where biris had been given for distribution. None of these seven persons, however, was produced at the trial by the petitioner in support of this allegation and the reason underlying this apparently inexplicable omission is not at all disclosed.

Evidence has been led by the petitioner to show that some 5 or 7 days before the election this Prakash Chander, who is Proprietor of Jagdish Hotel and Restaurant at Badaun, purchased biris, matches and cigarettes worth about Rs. 150 from the shop of P.W. 39 Ram Lakhan Lal, and gur and chana worth about Rs. 200 from the shop of P.W. 40 Ram Richpal, both of Ujhani, eight miles from Badaun and the home town of the petitioner. Further, that Prakash Chander took a portion of these articles along with bundle of match boxes and sweets, the latter two of which find no mention in the petition, in a car to P.W. 7 Ram Singh Mukhia of Sanjerpur for distribution in the latter's village, with a chit Ex. I from Ujager Singh Mukhia of Piprol; but the Mukhia Ram Singh refused to oblige Prakash Chander and introduced him to one Kedar Singh of his village for that purpose. Further that this stock of biris, cigarettes, gur and chana was later distributed to the voters at the camps of the respondent No. 1 on the date of the poll, *viz.* September 26, 1954, at four polling Stations in the Constituency, *viz.* Ramzanpur, Sanjerpur, Raunaiya and Husainpur Khara.

Not much reliance can be placed upon the evidence of P.W. 39 Ram Lakhan Lal as he did not produce his account book in which he alleged there was an entry of this alleged sale, nor on the evidence of P.W. 40 Ram Richpal, who made no note of this transaction anywhere. It is difficult to believe that he could

remember full particulars of sales alleged to have made by him one year earlier, but of which he had kept no record and that too in respect of a customer who came to his shop for the first time on that day. It is admitted that there are shops in Badaun where these articles are easily available but no reason whatsoever has been given for their procurement from Ujhani at extra cost. Further, no records of the Municipal Boards of either Badaun or Ujhani have been summoned and produced before the Tribunal in order to prove the transit of these articles from Ujhani to Badaun, it being admitted that octroi is levied when goods pass between these two places. Hanuman and Master Ahmad, who are said to have conveyed this information to the petitioner, as alleged by him in his cross-examination, have not been produced. That the chit Ex. I bears the signature of Ujager Singh has been amply provide by the respondent's own witnesses, viz. Laiq Singh R.W. 24 and Nawab Singh R.W. 31, but the circumstances under which it was written still remains shrouded in mystery. It was suggested on behalf of the respondent No. 1 that this chit was obtained from Ujager Singh only a day before the statement of Ram Singh P.W. 7 for being produced before the Tribunal. This elusive mystery man Ujager Singh, who more than anybody else, except perhaps Sri P. L. Bhadwar, figures most prominently in this case, has not been produced as a witness by either party, each alleging him to be the worker of the other. That he initially agreed to work as the Polling Agent of respondent No. 1 is proved beyond doubt by Ex 144 which is Form No. 6, signed both by him and respondent No. 1 on 20th September 1954, but whether he actually worked as such or not on the date of the poll is not clear as no duplicate of this Form No. 6, bearing the signatures of Ujager Singh and the Presiding Officer in token of his presence at the Polling Station on the date of the poll, which would have been conclusive evidence on this point, has been produced. That he was running with the hare and hunting with the hounds is proved by the petitioner's own witness P.W. 56 Makhan Lal, who admitted in his cross-examination that Ujager Singh was initially and outwardly working for the Congress, i.e. the party to which the petitioner belonged. This fact is further corroborated by R.W. 30 Lakhan Singh, Adalti Panch of Kachla, a non-partisan in the election, and R.W. 36 Ved Singh a -/4/- member of the Congress and the Polling Agent of the petitioner at the Polling Station, Husainpur Khara (*vide* Exs. A-35 and A-36) both of whom say that Ujager Singh was working for the petitioner at Husainpur Khara Polling Station on the date of the poll. P.W. 7 Ram Singh does not in his deposition before the Tribunal specifically name Prakash Chander as the bearer of this chit Ex. I and the stock of biris, cigarettes, matches, gur and gram, but his name is sought to be inferred by reference to the contents of that chit in which Prakash Chander is named by Ujager Singh as the person through whom he was standing this stuff to him. Be that as it may, the absence from the witness-box of Ujager Singh or of the nephew of Ram Singh P.W. 7 by whom Ram Singh got this letter read out to him, he himself being unable to read it, except his own name and that of Ujager Singh due to old age and defective eyesight, or of Naubat Singh, Kishan Singh, Jagan Singh or Roop Singh, four out of 10 or 20 witnesses of his village whom Ram Singh alleges to have shown this chit Ex. I soon after its receipt from Ujager Singh detracts considerably from the evidence of Ram Singh and Ex. I both. Even more significant than this is the non-production by the petitioner of his own Agent Ant Ram at this Polling Station Husainpur Khara who, the petitioner alleged, gave him this information about Ujager Singh. The evidence of the remaining witnesses for the petitioner, namely, P.W. 17 Razi Uddin, P.W. 31 Pooran Singh, P.W. 44 Altaf Ghani and P.W. 45 Hirey for Ramzanpur Polling Station and P.W. 20 Sher Ali of Sanjerpur, the solitary witness for Sanjerpur Polling Station, of P.W. 21 Phool Singh and P.W. 30 Neksu Singh, both of Dahemo, for the Polling Station Raunaiya and of P.W. 47 Rajju Singh and P.W. 56 Makkhan Lal for Husainpur Polling Station is not such as to merit detailed discussion because all of them depose about the distribution of biris, cigarettes, gur and chana at the camps of respondent No. 1 on these Polling Stations on the date of the poll not by Prakash Chander or any of the 31 persons named by the petitioner through whom Prakash Chander committed this form of bribery, except Qamarul Hasan, Lakhan Singh and Ujager Singh, two of whom namely Qamarul Hasan (R.W. 27) and Lakhan Singh (R.W. 30) have deposed for the respondent, and the other, Ujager Singh, has not been produced by the petitioner on whom lay the burden of proof.

The respondent has in refutation of this charge produced R.W. 6 Prakash Chander who was also summoned but not produced by the petitioner. This witness has categorically denied all allegations made by or on behalf of the petitioner and further explained that in compliance with an order placed with him by respondent No. 1 on 23rd September, 1954 he supplied through his servant Shiam Sunder sweets, namkeen and Kachauris worth about Rs. 400 to

respondent No. 1 for his workers on the date of the poll for which he gave him a receipt, which is Ex. 133. He denied having done any other work for respondent No. 1 in this election or having toured any part of the Constituency or having gone to P.W. 7 Ram Singh of Sanjerpur with the chit Ex. I from Ujagar Singh of Piprol, both of whom he said he did not know at all. The respondent's other witnesses on this point, R.Ws. 16, 17 and 32, namely, Sia Ram, Rahim Bux and Sri P. L. Bhadwar of Ujhani, R.W. 30 Lakhan Singh of Husainpur, R.W. 41 Brijpal Singh of Chandanpur, R.W. 27 Qamarul Hasan, R.W. 42 Fakhruul Hasan, R.W. 43 Faizul Hasan of Ramzanpur, R.W. 45 Tulsi Ram, a Vaish, ex-zamindar of Ramzanpur, who alone used to pay a land revenue of Rs. 600, R.W. 48 Bhola Shah and R.W. Roshan Singh Panch of Ahirwara, all negative this charge of the petitioner.

It is thus clear that there is no evidence at all of the distribution of *biris*, cigarettes, gram and *gur* to anybody by Prakash Chander on the 24th, 25th and 26th September 1954, and he is also not proved to have been the agent, either *de facto*, or of any other sort of respondent No. 1. What little evidence there is with respect to this charge, it is confined to the four Polling Stations of Ramzanpur, Sanjerpur, Raunaiya and Husainpur, out of the 27 Polling Stations and 300 villages which comprised the Constituency and that too for the date of the poll, i.e. the 26th September 1954 only. All this evidence is in complete variance with the allegation of this petitioner in his petition and therefore absolutely inadmissible in evidence. The learned counsel for the petitioner in a very ingenious, though not equally convincing, argument sought to prove that Prakash Chander was the *de facto* agent of respondent No. 1 by referring to the entry of his name made by respondent No. 1 in Part C of Form No. 26, Ex. A-39 in which all other expenditure incurred by a candidate on account of agents, clerks, or messengers is to be shown. This entry however has to be read along with the corresponding entries in respect of voucher No. IIC and the sum of Rs. 405 shown in columns numbers 4 and 5 against the name of Prakash Chander in the same Part C in respect of the price of sweets and other *nashta* supplied by him to respondent No. 1, as mentioned in receipt Ex. 133.

Assuming, without holding that this offer was made, it would indeed be doing violence to the provisions of the statute and straining it unduly if a trifling and customary mode of entertainment and courtesy as this offer of a *biri* or cigarette or even of a handful of *Gur* and gram no doubt is, on the date of the poll only and that too, not by any accredited agent or worker of a Candidate but by a mere volunteer to a worker or a voter who comes with the express object of voting without any previous announcement that such refreshment will be provided, nor anything said to the voters, at the time they got the refreshment as has been deposed by the petitioner's own witnesses in this case, be termed as "bribery" pure and simple. It is not only an imperative necessity but an inescapable obligation on the part of candidates to make suitable arrangements for the feeding of their agents and workers in far outlying places in the suburbs on the date of the poll, unless these agents and workers agree to go on a voluntary fast. What Prakash Chander seems to have done in this case was to execute the order placed with him by the respondent No. 1 for the supply of refreshment and food to his workers at the camps on the date of the poll, and not the distribution of *Biri* and cigarette, *Gur* or gram to anybody for the voters as an inducement to them to cast their votes in favour of respondent No. 1. We refuse to believe that the voters of this Constituency were so thoughtless or indiscriminating as to be easily tempted to cast their votes for the respondent No. 1 by the none too alluring a bait of a handful of gram or an Ounce of "*Gur*" or even a "*Lion*" Brand *Biri* or a "*Chand*" Brand cigarette allayed by P.W. 39 Ram Lakhan Lal to have sold to Prakash Chander.

On a careful consideration of the entire evidence on this point, we have therefore, not the least hesitation in holding that the allegations of bribery as made by the petitioner in Para 5(a) of the Petition have not been proved at all. We, therefore, decide this issue in favour of respondent No. 1 and against the petitioner.

Issue No. 5.

In Para 5(c) of the Petition it was alleged that the respondent No. 1 himself and through his agent, Sardar Taran Singh, hired and procured motor vehicles for



the conveyance of electors to and from Polling Station's named in List III wherein he gave other particulars of this corrupt practice in the following tabular form—

**List III**

Date	Vehicle No.	Polling Stations
25-9 1954	UPM 1153	For the conveyance of voters to and from Ramzanpur.
"	USR 744	For the conveyance of voters to and from Rasolpur.
"	9114	For the conveyance of voters to and from Gabhwai.
"	UPM 1735	For the conveyance of voters to and from Qadar Chowk.

Respondent No. 1 denied these allegations in Para 6 of the additional pleas of his written-statement and further averred that in the absence of the names and descriptions of the electors alleged to have been conveyed, definite answers could not be given. We, however, repelled this plea and proceeded with the trial of this Petition holding that considering the nature of the charge the particulars already given by the petitioner were quite sufficient at that stage.

In respect of the vehicle No. USR 744 indicated at serial No. 2 on List III alleged to have been intended for Rasoolpur Polling Station, the learned counsel for the petitioner, however, stated in his statement recorded under Order X C.P.C. on 3rd June 1955 that on the oral complaint of the petitioner this vehicle was seized by the District Magistrate at Badaun at about 6 in the morning of September 26th before the start of the election and at that time there were no voters in it. The answer of the respondent No. 1 was that this vehicle was to be used only for the carrying of materials to his Camps at the Polling Station and not for the voters and that it was seized in the manner stated above before it could be so used. The seizure of the truck is confirmed by R.W. 38 Sri S. L. S. Kumaiyan, Magistrate 1st Class and District Election Officer in this bye-election as also by P.W. 19 S. I. Malkhan Singh who at that time was the Station Officer at Badaun. Sri Malkhan Singh brought with him the General Diary for September 1954 and also filed Ex. 3, the original writing which he said he obtained from Raghubir Singh, the owner of the truck at the Police Station in the course of his inquiry made under the orders of the District Magistrate, and also proved Exs 2 and 4 filed by the petitioner which are the certified copies of the entries made by him on 26th September 1954 in the General Diary of the result of his inquiry and of the writing given to him by Raghubir Singh. Sri Malkhan Singh did not verify the alleged facts from respondent No. 1, whom he said he tried to contact but could not meet. Ex 3, no doubt, supports the contention of the petitioner but in the absence from the witness-box of Fida Ali, Baldeo Singh the driver and of Raghubir Singh who was summoned but not produced by the petitioner, the veracity of Raghubir Singh being untested in cross-examination, not much importance can be attached to the contents of Ex. 3. The matter remains inconclusive and it cannot be definitely held that this truck was procured or hired by respondent No. 1 for carrying his voters to the Polling Station and not for the supply of refreshment to his workers at his camps on the date of the poll. R.W. 71 Maulvi Nihal Uddin, Advocate of Badaun and the principal worker of respondent No. 1 has stated that he engaged a truck through his servant Sabir Husain for the purpose of sending round the food stuff to the six Polling Stations in that vicinity but could not do so because the truck which had been engaged by his servant did not arrive. Sabir Husain has not been produced and the identity of the seized truck with the one alleged by Maulvi Nihal Uddin to have been engaged for respondent No. 1 has also not been established. The admission of the respondent No. 1 does prove that he procured a motor-truck on the date of the poll and the evidence suggests that it was this truck which was seized by the police in the morning but in the absence of good evidence to establish that the truck was to carry voters to the polls, we must extend the benefit of doubt to the respondent No. 1 and hold that it has not been proved that truck No. USR. 744 was hired or procured by respondent No. 1 for the conveyance of voters to and from Rasoolpur Polling Station.

We have, now, to see whether the remaining three vehicles or any of them was used by the respondent No. 1 for carrying his voters to the remaining three Polling Stations on the date of the poll so as to attract the provision of section 123(6) of the Act which prohibits the hiring or procuring, whether on payment or otherwise, of any vehicle by a candidate or his agent for the conveyance of any elector to or from any Polling Station and makes it a major corrupt practice. Priority amongst the petitioner's witnesses on this point must, however, be given to P.W. 3 Munna Lal, whose long story about the hiring and procuring of three out of these four vehicles briefly told, is that at the request of Sardar Taran Singh (R.W. 33) of Badaun, he agreed to supply for the conveyance of the voters of respondent No. 1 to the Polling Station truck No. UPM 1735 belonging to his master L Sita Ram and also introduced Badruddin (P.W. 8) driver of truck No. UPM 1153 and Raghubir Singh driver of truck No. USR 744 to Sardar Taran Singh (R.W. 33) who agreed to pay Rs. 45 for each truck for the day in addition to the cost of petrol and mobiloil and that Sri P. L. Bhadwar (R.W. 32) paid this sum in his presence to Sardar Taran Singh on the eve of the election inside the premises of the Cotton Mill at Ujhani where Sardar Taran Singh had taken him for that purpose, that thereafter these vehicles remained parked till 10 or 11 in the night at the Stand near the Cinema at Badaun when the Sarpanch of Qadar Chowk, whose name he could not remember and whom he did not know in the morning, came and took away trucks Nos. 1735 and 1153 to Sarkara Dharamshala where they passed the rest of the night that next morning, September 26, 1954, two other persons came to the Sarpanch who sat in his truck No. UPM 1735 and took him to village Nizampur and said that the other two men would take the other two trucks with them that from Nizampur and the other neighbouring villages within an area of 4 or 5 miles of Qadar Chowk Basti he made 8 or 9 trips during the day carrying in each trip about 30 or 45 persons and dropped them down at a spot about a furlong from the Basti and about half-a-mile from Police Station Qadar Chowk where the polling was taking place. A superficial reading of the evidence of this witness no doubt creates some impression on the mind of the reader, but a careful and minute postmortem of his statement obliterates the favourable impression created at first sight and will reveal the utter improbability of the story related by him. He was a mere *Munim* (Accountant) of L. Sita Ram as is also confirmed by the petitioner's own witnesses P.W. 15 Sardar Harbans Singh and P.W. 58 Gangs Ram. In order to fill up the lacuna caused by the absence from the witness-box of L. Sita Ram the owner and Khalil Ahmad, the driver of this truck who could in all respects be better and more reliable witnesses on this point, Munna Lal assumed the role of a canvasser in charge of the truck and said that he used to remain with the truck all along when it was in use. But the very amusing part of his story is that he could not tell the name of any person for whom he worked on the truck on the day previous or subsequent to the election nor the amount which he received from them nor even the places to which he could have taken this truck. He did not make any mention about this deal with Sardar Taran Singh to his master nor did he ever tell him that this truck was used on the election day for carrying respondent No. 1's voters to the Polling Station. He stated that he paid the hire money of Rs. 45 for this truck to his master, but when did he do so, he could not tell. He did not give to his master or produce at the trial the piece of paper on which he said he used to note the income and expenditure in respect of this truck when handing over the net income to his master and orally explaining him the account. The dealer from whose shop Sardar Taran Singh got him supplied petrol or mobiloil has neither been named or produced before us. He knew the trucks could be prosecuted for carrying passengers and that it was an offence to use them for carrying voters on the day of the election and yet he agreed to face the prosecution without referring the matter to his master merely on the assurance of Taran Singh and Sri P. L. Bhadwar, both of whom he said had assured him to take that responsibility upon themselves. On his own showing, therefore, he was an accomplice and as such no implicit reliance could be placed upon his testimony, unless corroborated in material particulars. There is a wide measure of discrepancy on important details between his statement and that of P.W. 15 Sardar Harbans Singh who has been produced by the petitioner to corroborate this witness.

Neither Rafi Ahmad nor Raghubir Singh the owner of truck No. USR 744, in whose presence this deal is said to have taken place at 10 or 11 A.M. at the Workshop of Taran Singh, have been produced before us. We may not attach any significance to the fact elicited in his cross-examination that both he and his master L. Sita Ram belonged to the same community as the petitioner as a possible motive for his deposing in favour of the petitioner, but it is difficult to believe the petitioner that he did not know Munna Lal and met him only when

he came to depose for him before the Tribunal. Munna Lal has admitted that he knew the petitioner who was a Kothiwalla and the owner of a mill, that he was carrying his loads in his truck since 7 or 8 years and also knew that he was contesting the election on Congress Ticket. Munna Lal said that he did not say a word of all this affair to the petitioner who alleged to have derived all the knowledge about these facts from Sardar Taran Singh. Munna Lal further could not tell the names or residences of any of the voters alleged to have been carried by him and the village Nizampur only out of the numerous villages within an area of four or five miles of Qadar Chowk which he could name was not shown to be within the Polling Station of Qadar Chowk which included in its orbit villages in the Patwari's circle of Labhari, Qadar Chowk, Siwaya Hamidpur and Mamoorganj only. It is difficult to believe the statement of this witness to the effect that his master reposes so much confidence in him that he does not even bother to take accounts of daily income and expenditure from him. We are not disposed to place much reliance on the evidence of this witness who may have invented the story to harm the respondent No. 1 and to cast a slur on Sri P. L. Bhadwar. P.W. 8 Baderuddin, driver of truck No. UPM 1153, alleged to have been hired and procured for the conveyance of respondent No. 1's voters for the Ramzanpur Polling Station was similarly another accomplice in this affair, it being admitted by him that he had no Permit for driving passengers on his truck, and that he knew it was an offence to do so. The net average income from this truck of his master who was a dealer in grain, according to this witness, was about Rs. 500 to Rs. 600 per month and yet no account books have been produced to show the receipt of this hire money alleged to have been paid for it on behalf of respondent No. 1. Sri Shanti Swarup, the owner of this truck, to whom this witness alleges to have informed of this deal afterwards has also not been produced. The reason given by this witness for not informing his master of the agreement with Sardar Taran Singh on the day that it was made was that if he had not taken that contract he would not have been able to get his diet money that day because he did not have any other work on hand, show the stuff that this witness was made of. An employee who is prepared to hazard his own prosecution and that of his master, and also to forfeit a valuable Permit at the mere prospect of getting a paltry sum for his diet money cannot be trusted and no weight can be given to his evidence. While allegation of the petitioner was that this truck was used for the conveyance of respondent No. 1's voters to Ramzanpur Polling Station only the evidence of this witness is highlighted by the overflowing exuberance of his feelings for the petitioner as he stated that it was used for carrying voters to Ramzanpur, Gauramai, Bhadasia and Sakri, the last three, not being Polling Stations at all. His further statement that he carried voters from Gauramai and Pasai villages to Sakri Qasampur Polling Station is obviously not covered by the petitioner's pleading and the Polling Station for voters for Pasai, Sakri and Gauramai was at Junior Higher School of Sakri Qasampur Polling Station and not at Ramzanpur. Out of about 500 voters whom he alleged to have carried in his truck on that day, he too could not name or give any particulars of a single such voters and his description of the Dak Babu (Qamarul Hasan) R.W. 27 alleged by him to have been collecting voters on behalf of respondent No. 1 as "middle aged" was wrong, as Qamarul Hasan, the Dak Babu appeared to be an old man of not less than 60 years when he appeared in the witness-box. P.W. 17 Raziuddin, who claimed to be a neighbour of Qamarul Hasan, stated that Qamarul Hasan must be about 70 years old. Frankly we are unable to place much reliance on such evidence.

The third and the last link in the chain of this story of hiring and procuring of motor vehicles is P.W. 15 Sardar Harbans Singh who was alleged by Munna Lal P.W. 3 to have been present along with Rafi Ahmad at the Workshop of Sardar Taran Singh on the forenoon of 25th September 1954, when the alleged contact is said to have been made. This witness, however, said that Taran Singh had asked him to supply him a truck for use in the election but that he had refused and that when Munna Lal went away to call other persons he also went away. Obviously no further talk took place in his presence. He further said that only the respondent No. 1 and Munna Lal were present. He does not mention Rafi Ahmad at all. His further statement that Sardar Taran Singh had settled with Munna Lal for his own truck also is not borne out by the other two witnesses, viz. P.W. 3 Munna Lal and P.W. 8 Baderuddin. The respondent No. 1 has put into the witness-box Sardar Taran Singh R.W. 33 who denied allegations made against him on behalf of the petitioner and also the allegation that he conveyed any information about the trucks to the petitioner, or that he refused to depose for him when summoned on account of the influence of Sri P. L. Bhadwar, who was a Motor Magistrate, a fact also denied by Sri Bhadwar himself who said that he tried only those cases that were sent to him by the District

Magistrate. Sardar Taran Singh admitted to have known Munna Lal P.W. 3 for the last 3 or 4 years but only as the *Munim* of L. Sita Ram making payments of his bill from time to time and not as a worker on the truck which he often repaired as he did the vehicles of the petitioner and also the Bhadwars. Nothing has been elicited in the cross-examination of Sardar Taran Singh to discredit his testimony or to disprove the fact that Sri P. L. Bhadwar was not at Ujhani on the evening of the 25th September 1954 when the alleged payment is said to have been made by him on behalf of respondent No. 1 for the hiring of these trucks. Further, while in List III of the Petition read with Para 5(g) the date of the alleged hiring and procuring of all the four vehicles is given as 26th September 1954, the evidence adduced at the trial relates to 25th September 1954. We are unable to accept the truth of such charge on such flimsy evidence and find the story of the hiring and procuring of the trucks not well established. We will now take up the case of each of the three remaining vehicles separately one by one.

To begin with *vehicle No. UPM 1153* alleged to have been used for carrying the voters of respondent No. 1 on the day of the election, i.e. September 26, 1954 to Ramzanpur Polling Station, we have in addition to P.W. 3 Munna Lal and P.W. 8 Badruddin, whose evidence we have already discussed, the testimony of P.W. 31 Pooran Singh Panch and Pradhan of village Asrari (also known as Sarkara—*vide* R.W. 51 Tej Singh) who took a complete somersault in his cross-examination by stating that he did not see any voters being taken in trucks nor did he see the trucks in contradiction to the statement made by him in his examination-in-chief and the other witness P.W. Sri Prem Inder Singh, Second Officer of P.S. Qadar Chowk, who was on duty at this Polling Station and who alleged to have received an oral complaint from the agents of the petitioner whose names he could not remember. Sri Prem Inder Singh did not himself see any truck bringing voters to the Polling Stations nor did any agent of the petitioner point out any such truck to him. He had previously given intimation to the District Magistrate and the Supdt. of Police and had also deputed constables and chowkidars under their direction to catch any such vehicle, but none of them brought any such fact to his notice or knowledge. Sri Prem Inder Singh also stated that at the time when the oral complaint was made to him the District Magistrate and the Superintendent of Police had also arrived on the spot and he had placed the matter before those officers too. None of these officers have been produced by the petitioner, and the evidence of this witness instead of being of any help to the petitioner rather lends support to the plea of respondent No. 1. Not a single voter carried on this truck has been produced before us and there is the testimony of no less than five witnesses of respondent No. 1 namely R.W. 27 Qamrul Hasan, Branch Post Master of Ramzanpur, R.W. 45 Tulsi Ram Valsh, and *ex-zamindar of Ramzanpur*, R.W. 47 Roshan Lal, *ex-Patwari of Ramzanpur*, R.W. 51 Teja Singh the sister's son of P.W. 31 Pooran Singh who contradicts Pooran Singh and R.W. 57 Shri R. P. Tewari, Deputy Collector and Magistrate, Badaun, who was appointed an Extra-Officer for this bye-election and was posted for maintenance of law and order at the Polling Stations within the jurisdiction of the Qadar Chowk Police Station which included Ramzanpur Polling Station also. Sri Tewari had made a tour of the entire area of the jeep on the day of the election and stated that he did not see any truck carrying voters for P.S.P. to the Polling Station nor did anyone make any complaint to him about any vehicle. We may ignore the evidence of R.W. 39 Sri Bhagwati Prasad Mathur Tahsildar Badaun who was appointed as the Stationary Magistrate for this bye-election and who said that he also did not come across any truck carrying voters during his round of Ramzanpur Polling Station on the date of the poll as he had gone there along the Tube Well road which is not open to traffic by the public but we cannot do so in respect of the evidence of other witnesses of the respondent No. 1 mentioned above. We have, therefore, no hesitation in holding that the petitioner's allegations about vehicle No. UPM 1153 are unconvincing and not established.

We next come to *Vehicle No. 9114* alleged to have been used for carrying voters to and from Gabhwai Polling Station. Neither the driver nor the owner of the vehicle has been produced, nor were their names disclosed by anybody on behalf of the petitioner. Further, there is no evidence at all of its hiring or procurement by anybody on behalf of respondent No. 1. Even the number of this vehicle is not mentioned either by P.W. 23 Gangadin, who is alleged to have carried, in all, about 300 voters to villages Basania and Ikri in a truck at the request of his brother-in-law Kedar Nath (R.W. 28) and dropped them near a ditch called Kunda about half-a-mile from the Polling Station, or by P.W. 27 Girwar Lal of Ikri, the only voter alleged to have gone on a truck provided by

Gangadin to cast his vote at Gadhwal Polling Station. Kedar Nath (R.W. 23) denied the allegations made by P.W. 23 Gangadin against him and said that his relations with Gangadin were rather strained for the past few years on account of some dispute with his sister (wife Gangadin) over some money left by his deceased mother for which reason he also did not attend the wedding of Gangadin's daughter which was celebrated at Ujhani last Phagun and when the sister also did not go to his house to receive the "Bhat". He knew respondent No. 1 with whom he had some litigation but had no knowledge of this bye-election. Girwar Lal (P.W. 27) confessed that he would be unable to recognise the driver of this truck if produced before him, and his statement that Sia Ram P.W. 26 was also in the same queue with him, i.e. of the Lal Topi (respondent's) was obviously wrong as P.W. 26 Sia Ram had said that he had cast his vote at Rasoolpur Polling Station.

The evidence of the remaining three witnesses of the petitioner on this point, viz. P.W. Sri Brij Kishore Shukla S.O. Allahpur, of P.W. 2 Police Constable Moher Singh and P.W. 49 Shri A. S. K. Usafi, the Presiding Officer, all of whom were stationed at this Polling Station, does not prove the case of the petitioner at all. On the contrary, it negatives it altogether. On the complaint of some workers of the petitioner and noticing some marks of motor tyres on the ground. Sri Shukla deputed Chaukidars and constables nearabout the spot pointed out to him as the place where the voters of respondent No. 1 were alleged to be put down from the trucks, viz. the ditch or Kunda which was about three furlongs and visible from the Polling Station. In answer to questions put by the Tribunal Sri Shukla stated that the persons deputed by him did not meet him again that day, nor did they make any report to him and the election had passed off peacefully. P.W. 2 Moher Singh who was posted near the Camp of the parties saw the voters of the Lal Topi Party coming to the Polling Station mostly in their own conveyance of bullock-carts and on foot and he too did not see any other conveyance being used there and P.W. 49 Sri A. S. K. Yusuf the Presiding Officer at this Polling Station also did not himself see any such truck nor was any one shown to him as promised by Sarv Sri Om Prakash Sharma and Ram Prasad Gupta the Polling Agents of the petitioner who had made a written complaint to him of which Ex. 114 is a true duplicate copy bearing his endorsement at Ex. 115. Shri Yusuf also stated that one Sub-Inspector of Police and 4 or 5 Police Constables were also posted at this Polling Station and a Deputy Collector, the S. D. O. of Badaun also paid a visit during the poll. This Deputy Collector was Sri S. L. S. Kumaiyan R.W. 38 who said he paid a visit to this Polling Station also and saw no truck carrying voters to that place. It is unnecessary to refer to the statements of R.W. 60 Abdul Hakim, Ex-Mukhia of Ikri, of R. W. 61 Sharif Khan and R. W. 63 Masit Khan, both cultivators of Ikri who cast their votes at this Polling Station and negative the allegation of the petitioner about the use of any motor vehicle at this Polling Station. Our finding, therefore, is that no motor vehicle is proved to have been used for carrying the voters of respondent No. 1 at Gadhwal Polling Station also.

Lastly, we come to Vehicle No. UPM 1735 said to have been used for carrying the voters of respondent No. 1 to and from Qadar Chowk Polling Station. In addition to Munna Lal P.W. 3 whose evidence we have already discussed and disbelieved, the petitioner has produced on this point only two witnesses, namely, Ganga Ram P.W. 58, a cultivator of Qadar Chowk, who himself was not carried in any such truck to Qadar Chowk Polling Station but who alleged to have noticed while walking back to his field along the pucca road after casting his vote at the Polling Station a truck load of voters wearing red caps being unloaded by the other witness Inder Singh P.W. 34 the Sarpanch of Qadar Chowk at a distance about three furlongs from the Polling Station. Inder Singh's plea that he agreed to work for respondent No. 1 just for a day in spite of the prohibition attached to his office, at the personation of his relatives Narain Singh and Madan Mohan Singh is denied by Madan Mohan Singh (R.W. 65) and does not appear to us to be convincing. Inder Singh contradicted his earlier statement made in his examination-in-chief to the effect that he collected men from Nizampur and Bichaula and took them to Qadar Chowk by stating in cross-examination that Pop Singh of Nizamabad, Poshaki of Bichaula and Parshadi of Nizampur workers of respondent No. 1 had brought these voters from their respective villages and put them down on his truck which had no seats but in which Bichaula had been spread on the floor. Further Nizampur and Bichaula are not shown to be within the circle of Qadar Chowk Polling Station which included Labhari, Qadar Chowk, Siwaya, Hamidpur and Mammoorganj only, as stated before, and Nizamabad was certainly within the circle of Ramzanpur and not Qadar Chowk Polling Station.

as is evident from the list of Polling Stations supplied by the District Magistrate, Badaun, in this case.

It was, therefore, a deliberate lie when Inder Singh stated that the voters of these three villages were taken by him in the truck supplied by respondent No. 1 to cast their votes at Qadar Chowk Polling Station. He professed to be knowing rather intimately the Dak Munshi, the alleged conductor of the other truck to Ramzanpur for the past 10 or 20 years, yet throughout his statement he referred him by his incorrect name Qamar Uddin instead of the correct name Qamarul Hasan, thus betraying either gross ignorance or some tutoring or both. At any rate, he too was a mere accomplice and in the absence of reliable corroborative evidence we do not find him worthy of credit. He could not tell the number of the truck, the name of the driver or even of the other man who he said was also on this truck and contradicts Munna Lal by stating that he had no talk with him nor did anybody ever enquire from him who he was. It was, to say all a hush hush affair, conducted only by visible signs. Not a single voter of any of the three villages namely Nizamabad, Nizampur and Bichaulia, alleged to have been carried in this truck on behalf of respondent No. 1, has been produced and the allegation of P.W. 58 Ganga Ram referred to above that he had seen P.W. 34 Inder Singh working all along for the Lal Topi for over a month and that respondent No. 1 had come to his village in the morning on the day preceding the election in a truck and had left at 8 A.M. is in complete variance with the allegation of P.W. 34 Inder Singh who said that until one day before the election he had not worked for either party and that respondent No. 1 had come to his house about midday and then left his place at about 4 or 5 P.M. in a motor-car. It is not difficult to ascertain the reason for Ganga Ram P.W. 58 deposing against the respondent No. 1. He had since long known Munna Lal, who according to this witness too, had Commission Agency business at Badaun to whom he used to sell his produce every six months. He could not even tell to which village the voters whom he had sighted being unloaded by P.W. 34 Inder Singh, belonged. He did not convey this information to anybody or to the petitioner and said that he alone saw this affair and no-one else was present at this unloading of Lal Topi heads from the truck guided by the Sarpanch Inder Singh P.W. 34. No reliance can be placed on the evidence of this witness. Respondent No. 1 has produced seven witnesses to contradict the three witnesses of the petitioner including Munna Lal P.W. 3. Of these the more important are R.W. 25 Sri Ahmad Noor the Sub-Inspector of Police posted at the Polling Station which was inside the Polling Station Qadar Chowk where he remained from midday till the evening and R.W. 53 Shiv Sahai the Chowkidar who was posted by the S. O. at the turn near the *abadi* where he remained throughout the day. Both of them deny the allegations of the petitioner's witnesses that the voters of respondent No. 1 were dropped down at a spot away from and not visible from the Police Station. Ahmad Noor stated that standing in front of the Polling Station which was on the right side of the road one could see upto a distance of 200 yards on each side and he did not notice any truck carrying any voters on that day so long as he was there and no complaints were made to him by anybody and Shiv Sahai said that from his post at the turn of the *abadi* he also did not notice any such truck but noticed Inder Singh P.W. 34 coming to the Polling Station to cast his vote about 10 A.M. on foot. Sri R. P. Tiwari R.W. 57 Magistrate 1st Class, who made a round of this Polling Station also like that of Ramzanpur on a jeep also did not notice any such truck nor was any complaint made to him. Other witnesses are R.W. 49 Dwarka Prasad Ahir, R.W. 54 Lok Panch and R.W. 56 Chunni cultivator, all three of Qadar Chowk who said no voters were taken on truck and R.W. 65 Madan Mohan Singh of Sabalpur denied any relationship with Inder Singh and also that he or his cousin Narain Singh went to Inder Singh one day previous to the election to ask him to arrange for conveying of voters in truck to Polling station for respondent No. 1. We are satisfied that no motor-vehicle was used at Qadar Chowk Polling Station to carry voters of respondent No. 1 to the Polling Station.

A careful summary of the petitioner's entire evidence on this issue will show that out of about one thousand voters alleged by his witnesses to have been carried on trucks to the three Polling Stations of Ramzanpur, Gabhwal and Qadar Chowk only one, namely P.W. 27 Girwar Lal, has been produced for Gabhwal and none for the other two. *vis* Ramzanpur and Qadar Chowk. No account book of any of the owners, Shanti Sarup, Raghubir Singh and Sita Ram of vehicles Nos. UPM 1153, USR 744 and UPM 1735 respectively have been produced, nor any of the owners themselves been put into the witness-box and the name of the owner of the fourth one, *viz.*, No. 9114 has not even been disclosed at all. It has not even proved whether there is in existence any vehicle bearing this number and to crown this Pt. Mohan Lal, whom the petitioner alleged, had informed him by phone at the early hours of 2 A.M. from

Badaun about truck No. USR 744 meant for Rasoolpur Polling Station, or any of his other workers, supporters, sympathisers or agents polling or otherwise at these Polling Stations have been produced before us. The seizure of truck No. 744 at Badaun by the police and complaints made at Polling Stations Ramzanpur and Gabhwai on the date of the poll that voters for respondent No. 1 were being carried on trucks excite some suspicion of the use of motor-truck for him, but we find that the petitioner's allegations have not been fully established by cogent and definite evidence and on a consideration of the evidence in its entirety we decide both parts of this issue in the negative.

*Issue No. 6.*

Para 5(d) of the Petition supplemented by List IV of particulars alleged that the respondent No. 1 through his agent Nawab Singh abetted and procured the application by Ram Lal, resident of village Palia, for ballot paper in the name of his father Tursi, son of Nanhey, who did not come to the Polling Station Kachla to cast his vote but was personated by his son Ram Lal at the instance of Nawab Singh, agent of respondent No. 1. It was also stated in this Para that the petitioner will add additional instances afterwards before the Election Tribunal with its permission, but this was not done and the evidence was confined to the single case of Tursi of village Palia alleged to have been personated by his son Ram Lal. The electoral roll no. of Tursi which was not mentioned originally in the Petition was afterwards given as No. 584 by the petitioner on 4th June 1955.

The reply of respondent No. 1 to this allegation as given in Para 6 of the additional pleas of his written-statement is, that neither he nor any of his agents abetted or procured any votes by personation and that Nawab Singh did not work as an agent of the respondent No. 1 nor did he go to the Polling Station that day and no wrong vote was procured through him.

In support of his allegation reliance is placed by the petitioner on the statements of P.W. 41 Tursi, P.W. 42 Ram Lal, both cultivators of village Palia, P.W. 50 Chetanpuri of village Soalah and P.W. 29 Shri Bhoodev Gupta, Judicial Officer, Badaun, who was appointed as the Presiding Officer at this Polling Station as also on a written complaint in Hindi, Ex. 6, alleged to have been made by one Krishna Lal Anand of the Punjabi Market, Bareilly, Polling Agent of the petitioner, to Shri Bhoodev Gupta and the latter's remark marked Ex. 7 on Ex. 6. Tursi stated that he did not go to the Polling Station Kachla to cast his vote as he was lying ill at his house since 8 or 10 days before the Election, and Ram Lal stated that he was induced to cast his vote and personate his father Tursi at the instance of Nawab Singh, the agent of respondent No. 1. There are, however, material discrepancies in the statements of these two witnesses and of Chetanpuri P.W. 50, the only other witness of this fact, making the whole story rather improbable, the evidence of the remaining witness Sri Bhoodev Gupta being not of much help to the petitioner. No reason for Tursi's not casting his vote in this election was disclosed in the Petition and there is no satisfactory or reliable evidence on record to show that he was really ill and did not himself cast his vote at the Polling Station. If he was really so seriously ill that he was confined to bed inside his house and was unable to move about since 8 or 10 days before the election and remained so for about a month even afterwards as is alleged by these witnesses, it would be natural to think that Tursi should have been under the treatment of somebody. Ram Lal denied that Tursi was being treated by anybody and so did Tursi also at first, but immediately afterwards he returned round and said that he was being treated by Chetanman of Sarai, whom he alleged now to be dead. Chetanpuri stated that he could not see Tursi when he went to his house while out canvassing vote for the petitioner. In this examination-in-chief Chetanpuri said that it was Tursi's daughter-in-law who had told him of Tursi's illness but in his cross-examination he said that it was Tursi's wife who had given him this information in the presence of Sunder Singh of Palia, and Pandit Munshi Lal of his own village none of whom have been produced to corroborate his sole testimony. There is thus the bare statements of Tursi and Ram Lal themselves and no independent evidence in support of the plea that Tursi was sick and unable to go to the Polling Station to cast his vote.

Ram Lal gave his age as 22 years and said that he knew that his father Tursi, son of Nanhey, aged 50 years, was the elector and he himself was not an elector but had cast a vote on behalf of his father at the instance of Nawab Singh. At first he denied, but later admitted that before the issue of ballot paper to him, enquiries were made not once but twice, about his name, parentage and age which he gave each time as Tursi, son of "Nanka", aged 50 years. It is inconceivable that the person issuing the ballot paper would have failed to notice this vast disparity in ages and also incorrect parentage of Tursi given by Ram Lal

and would have issued ballot paper at the mere asking for it by Ram Lal, a youth of 22, personating his father Tursi, an elderly man of 50 years, whose parentage was also given incorrectly by him. Neither the Clerk who issued the Identity Slip nor the person who issued the ballot paper, nor even Soni, unconnected with respondent No. 1 whom Ram Lal alleged to have met at the Camp of respondent No. 1 amongst many others have been put into witness-box. Further Ram Lal at first said that from the time he got the red Slip from Nawab Singh on reaching the Camp of respondent No. 1 right up to the time when he got the ballot paper after enquiry only Nawab Singh and the Polling Officer were present, but in answer to a question put by the Tribunal he stated at the end of his deposition that at the time of his getting the ballot paper other Congressmen were also present there, all of whom heard him giving this wrong information and yet none from amongst them raised any objection. In the face of this most damaging and contradictory statements, no reliance can be placed on his evidence or that of P.W. 50 Chetanpuri who alleged to have made an unsuccessful attempt to catch Ram Lal when he tried to escape to his village after casting his vote. Kishen Lal Anand, the Polling Agent of the petitioner at this Polling Station who is alleged to have made the complaint Ex. 6 to the Presiding Officer has also not been produced before us and the number on the electoral roll of Tursi mentioned in this complaint is 558, while that quoted by the petitioner in his application dated the 4th June 1955 (Paper No. 69a) is No. 584. Moreover, there is not the slightest allegation against Nawab Singh in this complaint Ex. 6 on which the only remark of the Presiding Officer, Sri Bhoodev Gupta P.W. 29, marked Ex. 7 is that "nothing can be done now as the vote has already been cast". Sri Bhoodev Gupta further stated that at the request of Kishen Lal Anand, he went to the polling booth but did not find the man there and so he made the remark Ex. 7 mentioned above, and in answer to a question of the Tribunal stated that the vote cast by Tursi was not challenged and no fee was deposited. R.W. 26 Sri Shiv Raj Singh, Sub-Inspector, Police, was on duty at this Polling Station from morning till evening and he kept moving about all this time from booth to booth, yet no complaint was made to him about this alleged personation, nor did he himself see Ram Lal or any other person being chased by Chetanpuri or by anybody else. The respondent No. 1 has also put this Nawab Singh (R.W. 31) in the witness-box. Nawab Singh denied having gone to village Palla in quest of Tursi's vote or to have induced Ram Lal to personate for Tursi but admitted that on the date of the poll he did go to the Polling Station, Kachla, but only to cast his vote. He further admitted to have filled in the Agent form at the instance of Sri Onkar Singh, M.L.A., who, he said, told them that it was not an offence to act only as a Polling Agent. Even then he says he did not act as Polling Agent but went to Polling Station only for casting his vote. Ex. 53 which is a copy of Agent Form No. 6 for Kachla Polling Station filed by the petitioner and purporting to be signed by respondent No. 1 bears only, one date, viz the 20th September 1954 and there is no date below the signature of Sri A. A. Khan, the Returning Officer in this bye-election and further there is no signature or date of the Presiding Officer at all and as such it is of no help to the petitioner.

On an examination of the entire evidence on the record and taking into consideration the surrounding circumstances, we have no hesitation in holding that the charge of personation has not been proved, and decide this issue against the petitioner.

#### Issue No. 7 (c).

The last portion of Rule 61-A of the Panchayet Raj Act, No. XXVI of 1947, which only is relevant for our present purposes provides that:—

"No Sarpanch or Panch (of a Panchayeti Adalat) shall take part in an election to a local body other than a Gaon Panchayet or Panchayeti Adalat or to the State Legislature in any area within his jurisdiction otherwise than by casting his own vote as an elector."

It would thus be noticed that the prohibition for the Panches and the Sarpanches of Panchayeti Adalat to take part in Election to local bodies or to the State Legislature is not absolute but is restricted and confined only to the area within their territorial jurisdictions, and in areas outside their territorial jurisdiction they are free to take any part they like. Now, reading the relevant portion of Para 5(e) of the Petition and of List V of the Particulars, the case of the petitioner was that for the full period beginning from 26th August upto 26th September



Against Faizul Hasan, Mashooq Ahmed and Fakherul Hasan at Serial Nos. 1, 2 and 3 of this List, residents of Ramzanpur and Panches of the Adalti Panchayet Bhamuiya Bhadasia, the allegation of the petitioner was that all of them canvassed for the full period beginning from the 26th August upto 26th September 1954 in the villages which are in the jurisdiction of this Panchayet

Adalat, and reliance is placed upon the evidence of P.W. 17 Raziuddin, cultivator of Ramzanpur, P.W. 31 Pooran Singh, cultivator of Asrasi, P.W. 44 Altaf Ghani, cultivator of Ramzanpur and P.W. 45 Hirey, cultivator of Khitaulia. Of these witnesses Raziuddin simply says that these three persons came to his village Ramzanpur on behalf of the Socialist Party for canvassing, but when they did so and whom they canvassed, he says nothing, and Pooran Singh says about the canvassing in his village Asrasi by Qamrul Hasan, who is not mentioned in this List at all. Pooran Singh further admits that Faizul Hasan did not come to his village but met him at the Polling Station of Ramzanpur. About Fakherul Hasan, also known as Lareti, Pooran Singh said that he used to give slips at the Lal Topi Bister on the date of the poll at the Ramzanpur Polling Station. P.W. 44 Altaf Ghani of Ramzanpur said that these people used to go round the village from house to house asking for votes, and lastly P.W. 45 Hirey of Khitaulia within the circle of Bhamuiya Panchayeti Adalat said that these people had come 3 or 4 times to his village and had asked him for his vote. There is thus the solitary evidence of Hirey for his village Khitaulia and of Raziuddin and Altaf Ghani for Ramzanpur which is vague and that of Pooran Singh for Asrasi which is inadmissible being with reference to Kamarul Hasan and not about the three persons named in this List. Moreover, it is not shown that Ramzanpur and Asrasi are within the circle of the Panchayeti Adalat of Bhamuiya Bhadasia. All these three persons have entered the witness-box on behalf of the respondent No. 1 as P.Ws. 43, 44 and 42 respectively and denied on oath to have done anything except acting as the Polling Agent of respondent No. 1 on the date of the poll only, and in this they are supported by R.Ws. 45 Tulsi Ram a Vaish and ex-zamindar who paid Rs. 600/- as land revenue before the abolition of Zamindari and R.W. 47 Roshan Lal a cultivator of Ramzanpur, both of whom, however, admitted to have worked on behalf of respondent No. 1 at Ramzanpur Polling Station. We, therefore, hold that there is no sufficient evidence of canvassing against these three persons but only of their acting as the Polling Agents of respondent No. 1 on the date of the poll, which, as mentioned before, is not objectionable.

#### 4. Aulad Husain.

He is a resident of Mindholi and Panch of Panchayeti Adalat, Noorpur. Against him there is the undoubted and unrebutted testimonies of P.W. 18 Ram Dayal and P.W. 28 Pooran Singh, both of Noorpur, and P.W. 22 Shakir Bux, cultivator and Mukhia of Mindholi who also said that Mindholi was within the circle of the Panchayeti Adalat of which Aulad Husain was a Panch and we have no doubt that in addition to acting as the Polling Agent of respondent No. 1 he canvassed votes also for him in villages Noorpur and Mindholi within the circle of his Panchayeti Adalat.

5. Udaibir Sharma, resident of Sikanderabad and Panch of the Panchayeti Adalat, Dahemo, who entered the witness-box on behalf of the respondent No. 1 as R.W. 37, admitted to have acted as the Polling Agent of respondent No. 1 at Husainpur Polling Station but denied to have canvassed for him. There is, however, overwhelming evidence of P.W. 21 Phool Singh of Dahemo, P.W. 30 Neksu Singh also of Dahemo who made a very slight mistake in naming Udaibir as Udaibir Singh instead of Udaibir Sharma and also for Madan Singh in referring him as Mohan Singh which is not very material. P.W. 47 Rajju Singh Mukhia of Husainpur Khera, P.W. 56 Makkhan Lal, cultivator and P.W.D., cultivator of Piprol (who also made a slight mistake in naming Udaibir as Udaibir Singh instead of Udaibir Sharma) also deposed about Udaibir Sharma's canvassing in their respective villages and we are satisfied on an examination of the evidence of these witnesses that Udaibir Sharma did canvass votes for respondent No. 1 within the circle of his Panchayeti Adalat in addition to his working also as the Polling Agent of respondent No. 1.

#### 6. Pearey Lal.

He is resident of Savantinagla and Panch of the Panchayeti Adalat, Kachla. We have the oath of this Pearey Lal, R.W. 26, against the oath of P.W. 56 Makkhan Lal, and give respondent No. 1 the benefit of doubt and hold that it is not sufficiently proved that Pearey Lal acted as the Polling Agent or respondent No. 1 or canvassed votes for him at any place within the circle of his Panchayeti Adalat.

7. Ujagar Singh, resident of Piprol and Panch of the Panchayeti Adalat, Kachla. We have discussed at length about him in our findings under Issue No. 4 and give respondent No. 1 the benefit of doubt and hold that canvassing by him is also not sufficiently proved.

8. Madan Singh of Jeora, Panch of Panchayeti Adalat, Dahemo is a mistake for Mohan Singh (*vide* Form No. 6, Ex. 49) who is of Bondri and not Jeora and who is alleged to have worked at the Polling Station, Bondri and not Runaiya as given in List V. Hence his case too is not proved.

9. *Munshi Lal* of Kudha Shahpur and Panch of Panchayeti Adalat Kachla is proved to have canvassed in Kudha Shahpur within the circle of his Panchayeti Adalat Kachla by P.W. 5 Ramdin whose statement remains un rebutted on behalf of respondent no. 1.

10. *Liladhar*, resident of Bhainsora and Panch of Panchayeti Adalat Bhainsora is proved to have canvassed for respondent No. 1 by his admission, Ex. 30, corroborated by the un rebutted testimonies of P.W. 46 Davender Singh of Butla and of P.W. 51 Ram Lal of Sarai Sohala which are, however, not shown to be within the circle of his Panchayeti Adalat Bhainsora. Hence his case does not help the petitioner.

11. *Mohan Singh*, resident of Bondri and Panch of Panchayeti Adalat Bhainsora, is a mistake for Mohar Singh (*vide* Ex. 52) and hence the statement of P.W. 46 Davendra Singh of Butla who speaks of Mohan Singh is not of help to the petitioner, but P.W. 51 Ram Lal of Sarai Sohala has correctly named him as Mohar Singh. Still there is no evidence to show that Sarai Sohala is within the jurisdiction of Panchayeti Adalat Bhainsora. Hence this case is also not proved.

12. *Nawab Singh*, resident of Kachla and Sarpanch of Panchayeti Adalat Kachla (R.W. 31) admits having filled in the Agent Form for respondent No. 1 at the instance of Sri Omkar Singh but denies to have acted as the Polling Agent on the day of the poll or to have canvassed for respondent No. 1. His canvassing is, however, proved by P.W. 38 Chet Ram Singh of Sarauta, P.W. 47 Rajju Singh of Husainpur Khera and P.W. 56 Makkhan Lal of Piprol, all three of whom say that their villages are within the circle of the Panchayeti Adalat of Kachla of which Nawab Singh is the Sarpanch.

13. *Ram Rakshpal*, resident of Sarota and Panch of Panchayeti Adalat Kachla. one Kos from Sarota. His written admission of having worked for the respondent No. 1 in Ex. 128 is further corroborated by the un rebutted, though solitary statement of P.W. 38 Chet Ram Singh for his village Sarota and P.W. 41 Tursi for his village Palia and P.W. 47 Rajju Singh for his village Husainpur Khera within the circle of Panchayeti Adalat Kachla.

14. *Gendan Lal*, resident of Pachodinagla and Panch of Bhoora Bhadrol is proved to have canvassed for respondent No. 1 by the solitary but un rebutted evidence of P.W. 10 Netrapal Singh of Debi Singh Ka Nagla.

15. *Ram Lal Singh* of Rauli and Panch of Panchayeti Adalat Rauli. Canvassing by him is proved by his written admission, dated 27th February 1955, Ex.132, coupled with the un rebutted evidence of P.W. 9 Lalman Singh and P.W. 32 Mahesh Chandra, both of Rauli.

16. *Ram Chander*, resident of Rudyan and Panch of Qader Chowk Panchayeti Adalat. There is no evidence against him and he was therefore given up by the petitioner during the course of arguments.

17. *Nizam Ali* of Noorpur and Panch of Panchayeti Adalat Noorpur is proved to have canvassed in his village Noorpur by P.W. 18 Ram Dayal and P.W. 28 Poorni, both of Noorpur and by P.W. 22 Shakir Bux in village Midholi, and there is no evidence in rebuttal on behalf of the respondent No. 1.

18. *Ram Swarup*, resident of Bhojpur and Panch of Panchayeti Adalat Noorpur (R.W. 68) denies to have canvassed for respondent No. 1, but is proved to have done so by the aforesaid three witnesses, viz. P.W. 18 Ram Dayal, P.W. 28 Poorni and P.W. 22 Shakir Bux.

19. *Aulad Husain*. Already discussed at No. 4.

20. *Chotey Lal* of Ikri Basiyani and Sarpanch of Onaula Panchayeti Adalat (R.W. 59) denied having canvassed for respondent No. 1, but is proved to have done so by P.W. 23 Gangadin of Gabhwai, P.W. 26 Sia Ram of Uprela and P.W. 27 Girwar Lal of Ikri and P.W. 35 Daryao Singh of Kutrai.

21. *Raghubir Singh*, resident of Kharkholi Buzurg is proved to have canvassed for respondent No. 1 by the un rebutted testimonies of P.W. 28 Gangadin of Gabhwai, P.W. 24 Ishwar Singh of Khakrolli Kalan, P.W. 25 Daryao Singh of Kutrai and P.W. 59 Mathura Pd. of Onaula, but while in this List V he is shown to be the Panch of Panchayeti Adalat Onaula, Ex. 109 shows him to be that of Panchayeti Adalat Shakhanoo. We, therefore, reject his case.

22. *Saduram* of Kutrai is also proved to have canvassed for respondent No. 1 by the un rebutted though solitary statements of P.W. 24, Ishwar Singh of Kharkholi Kalan for his village and of P.W. 25 Daryao Singh of Kutrai for his own village

Kutra, but while in this List V he was shown to be the Panch of Panchayeti Adalat Onaula, Ex. 110 which is the copy of the entry from the Register of Panches, he is shown to be the Panch of the Panchayeti Adalat Sakhanoo. We, therefore, reject the case of Saduram also.

23. *Chintaman* of Rasulpur and Panch of Panchayeti Adalat Dauri Narotampur. The admission made by him in Ex. 132 is corroborated by the unrebutted testimonies of P.W. 26 Sia Ram and P.W. 59 Mathura Pd., both of Onaula within the circle of Panchayeti Adalat of Chintaman.

24. *Ram Lal* of Kharkholi Buzurg and Panch of Sakhanoo Panchayeti Adalat is also proved to have canvassed for respondent by the unrebutted though solitary testimony of P.W. 24 Ishwar Singh of Kharkholi Buzurg.

Our finding, therefore, is that there is satisfactory evidence on the record to show that the following 12 Panches viz:—

1. Aulad Husain of Mindholi, at serial No. 4 of List V.
2. Udaibir Sharma of Sikanderabad at serial No. 5 of List V.
3. Munshi Lal of Kudaha Shahpur at serial No. 9 of List V.
4. Nawab Singh of Kachla at serial No. 12 of List V.
5. Ram Rakhshpal of Sarota at serial No. 13 of List V.
6. Gendan Lal of Pachaudi Nagla at serial No. 14 of List V.
7. Ram Lal Singh of Rauli at serial No. 15 of List V.
8. Nizam Ali of Noorpur, at serial No. 17 of List V.
9. Ram Swarup of Bhojpur, at serial No. 18 of List V.
10. Chotey Lal of Ikri Basiyani, at serial No. 20 of List V.
11. Chintaman of Rasulpur, at serial No. 23 of List V.
12. Ram Lal of Kharkholi Buzurg at serial No. 24 of List V.

took part in this election on behalf of respondent No. 1 by canvassing votes for him in villages within the circles of their respective Panchayeti Adalats on some days, if not all, between the 26th of August to 26th September 1954, in violation of Rule 61-A of the Panchayet Raj Act XXVI of 1947, and we, therefore, decide this issue in favour of the petitioner and against the respondent No. 1.

*Issue No. 7(b).*—Under section 100(2) (c), the mere non-compliance with the provision of the Constitution or of the Representation of the People Act, 1951, or of any rules or orders made under this Act or of any other Act, or Rules relating to the Election, is by itself not sufficient to declare the election of the returned candidate void. The petitioner has further to prove that the result of the election has been materially affected by such non-compliance and the onus for doing so lies on the petitioner. Drawing a distinction between the English and the Indian Law on this point, it was held by the Election Tribunal, Lucknow, in the case of *Abdul Rauf versus Govind Ballabh Pant and others*, reported in 8 E.L.R. page 240, at page 241, that:—

“Under the English law, if non-compliance with any of the provisions of the rules is proved, the onus lies on the respondent to show that it did not affect the result of the election, whereas under section 100(2) (c) of the Indian Act, even though the petitioner succeeds in proving non-compliance with rules, the onus still remains on him to prove that it has materially affected the result of the election, that is to say, it has caused the returned candidate to obtain a majority of votes. It is not enough to show that the result of the election might have been affected.”

To the same effect is the decision of the Faizabad Tribunal, in the case of *Shanta Devi Vaidya Versus Bashir Husain Zaidi and others*, as reported in 8 E.L.R. at page 301.

While recognising the great difficulty and the magnitude of the task which a petitioner has to face in such a case we respectfully agree with the above-mentioned earlier decisions and consider that it is not possible to relieve the petitioner of the duty cast upon him under section 100(2) (c) of the Act. In the present case there is no sufficient evidence on behalf of the petitioner to show that the result of the election has been materially affected by the non-compliance of Rule 61-A of the Panchayet Raj Act.

It has, however, to be borne in mind that Rule 61-A of the Panchayet Raj Act is a rule which regulates the conduct of the Panches and Sarpanches in connection

with elections, and is not a rule embodied in the Representation of the People Act, though the language of section 100(2) (c) is wide enough to cover such a rule also.

But the matter does not stop here. It is argued by the learned counsel for the petitioner that Panches and Sarpanches under the Panchayet Raj Act, XXVI of 1947, would come under the category of "other village officer" within the explanation (b) to section 123(8) of the Act, and the obtaining and procuring assistance from them in the shape of canvassing, as has been proved to have been done in this case by or on behalf of the respondent No. 1 would be a major corrupt practice entitling the Tribunal to declare the election of the returned candidate void under section 100(2) (b) of the Act. Reliance is placed on two decisions of the Gorakhpur Tribunal (1) in *Madan Pal Versus Rajdeo Upadhyaya and others*, reported in 6 E.L.R., Page 28 and (2) in *Shibban Lal Versus Hari Shanker Pd.*, reported in 9 E.L.R., Page 403, with which we are in complete accord. The view expressed by the learned Members of the Gorakhpur Tribunal finds further support by the action of the State Government in issuing the Notification dated 23rd February, 1955, (published in the U.P., Government Gazette, Extraordinary of that date) declaring that the provisions of section 123(8) Explanation (b) shall not apply to a Sarpanch, Sahayak Sarpanch and Panch of a Panchayati Adalat and a Pradhan, Up-Pradhan and Members of the Gaon Sabha constituted under the U.P. Panchayet Raj Act, 1947. This Notification indicates that these Panches and Sarpanches etc., come within the purview of Explanation (b) of section 123(8) and hence the State Government found it necessary to exclude them from the operation thereof.

To the objection of the respondent No. 1, that no such allegation was made in the petition, the petitioner further submits that if a corrupt practice comes to the notice of the Tribunal, the Tribunal is not debarred from considering it in the interests of the public and reliance is again placed by the petitioner on several reported cases, chief of which are:—

- (1) 10 E.L.R. 461 at Page 468.
- (2) 8 E.L.R. 424 at Page 427.
- (3) 4 E.L.R. at Page 419.
- (4) 8 E.L.R. 207 at Page 219.

There is considerable force in this argument and we, therefore, hold that the respondent No. 1 obtained and procured assistance of Panches and Sarpanches appointed or elected under the Panchayet Raj Act, XXVI of 1947, and was thus guilty of a major corrupt practice under section 123(8) of the Act and that his election is therefore void under section 100(2) (b) of the Act and decide the issue in favour of the petitioner.

*Issue No. 8.*—In the earlier portion of Para. 7 of his written-statement it was pleaded by the respondent No. 1 that Rule 61-A of the Panchayet Raj Act, XXVI of 1947, was *ultra vires* of the State Legislature and is inapplicable. We have already held in the finding on issue No. 7(a) that this rule is not inapplicable in the present case. It would, therefore, be sufficient to say that in our view the rule is not *ultra vires*, nor does it militate against any provisions of the R. P. Act. The arguments advanced in support of this plea on behalf of respondent No. 1 do not appeal to us. This point has been discussed at length under issue No. 3(b) by the Allahabad Tribunal at Pages 156 to 158 in the case of *Deo Chand and others Versus Vashist Narain and others* reported in 6 E.L.R. at Page 138 where it was held by the Tribunal that this Rule was not *ultra vires*. We need not repeat all those arguments over again here and would be content to say that we are in complete agreement with the decision of that Tribunal on this point. The Election Tribunal Ernakulam in the case of *Mathai Mathew Manjuran Vs. K. C. Abraham*, reported in 10 E.L.R., at page 376, went even further and held that:—

"An Election Tribunal is not a "court" within the meaning of the proviso to section 113 of the Civil Procedure Code, and it has therefore no jurisdiction to declare a provision of a statute, such as section 133 of the Civil Procedure Code, unconstitutional on the ground that it infringes the fundamental right to equality before the law guaranteed by article 14 of the Constitution, or to refer the question to the High Court under section 113 of the Code."

We, therefore, hold that Rule 61-A of the Panchayet Raj Act is not *ultra vires* and decide this issue in favour of the petitioner and against the respondent No. 1.

*Issue No. 9(a).*—In Para. 5(f) the petitioner alleged that the Return of Election expenses filed by the respondent No. 1 and the declaration verifying it is false in material particulars and is against the mandatory provisions of law pertaining to Election Returns and this has materially affected the result of the Election and by

itself entails disqualification of the respondent No. 1 under section 140 of the Representation of the People Act. The petitioner gave details of this corrupt practice in List No. VI which is divided into three, Paras. Nos. 1, 2 and 3 respectively—

In Para. 1 it was alleged that the respondent No. 1 employed on payment four persons, viz—

- (i) Balwant Kahar (L.W. 66).
- (ii) Ram Charan (L.W. 58).
- (iii) Karan Singh (L.W. 52) and
- (iv) Phool Singh (R.W. 67).

against the provisions of rule 118 of the Representation of the People (Conduct of Elections and Polling Agents) Rules 1951.

In Para. 2 of the petition the petitioner gave the names of 24 persons, all of whom he alleged to be outside and most of whom also worked as the Polling Agents of respondent No. 1. The petitioner contended that the travelling expenses etc. of all these persons were not shown in the Return of Election Expenses filed by the respondent No. 1. Subsequently, allegation of acting as Polling Agent was confined to 22 persons of this list, and Acharya J. B. Kriplani and Dr. Ram Manohar Lohia, at serial Nos. 1 and 2 of this list, were excluded from the category of Polling Agents.

In Para. 3 it was alleged that the amount paid to truck owners mentioned in List III had not been shown in the Return.

It was, therefore, pleaded by the petitioner that the total amount of expenses incurred by the respondent No. 1 was far in excess of the maximum amount prescribed and many items had been omitted with a view to keep it below the maximum limit prescribed.

Further and better particulars of these "many items" were given by the learned counsel for the petitioner in his statement under Order X C.P.C. recorded on 3rd June 1955, but except for Shiam Sunder alleged to have been employed as a messenger by respondent No. 1 and whose pay and expenses were not shown in the Return, no other items included in these better and further particulars were pressed in arguments.

We will now take up each of these Paras separately—

**Para. 1 of List VI.**—The respondent No. 1 was his own Election Agent. Ex.A-39 is the Return of Election expenses in Form No. 26 and Exs. 155 and 156 are the two accompanying declarations (affidavits) solemnly affirming the truth of that Return lodged by him on 9th November 1954 with the Returning Officer, as required by section 76 of the Act and Rule 112 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951. The respondent No. 1 has again affirmed in his cross-examination that the entries in this Return are correct and he had understood them before filing the Return. Now, in Part B under the head "Expenses" in this Form No. 26 the expenditure incurred by the Candidate or his Election Agent for the remuneration of agents (including the Election Agent), clerks and messengers and the names and description of each agent, clerk or messenger employed and the rate of remuneration and the amount paid to each one of them has to be shown. The respondent No. 1 has shown all these four persons, viz. (i) Balwant Kahar on Rs. 40/- p.m., (ii) Ram Charan on Rs. 50/- p.m., (iii) Karan Singh on Rs. 50/- p.m., and (iv) Phool Singh on Rs. 40/- p.m. as "Servants" employed with effect from 28th August to 26th September 1954 for "Services in Election" under this head. In case of Balwant Kahar payment is shown to have been made on 5th October 1954, and in the cases of the remaining three, viz. Ram Charan, Karan Singh and Phool Singh on 7th October 1954 after the election. In addition to these four servants, he has also mentioned one Kishan Swarup Saxena as "Clerk" employed with effect from the 30th August to 28th September 1954 for "Services in the Election" on Rs. 80/- p.m. and payment is shown on 8th October 1954. Exs. 157, 151, 148, 153 and 158 are the original receipts obtained by respondent No. 1 from Balwant, Ram Charan, Karan Singh, Phool Singh and Kishan Swarup respectively. Of these, Ex.148 written in Hindi and bearing the thumb impression of Karan Singh (R.W. 52) on the Revenue Stamp, is proved by this Karan Singh to have been written by respondent No. 1 himself. The latter admits that whatever is written in these receipts is correct.

The admitted employment of these four servants, viz. Balwant Kahar, Ram Charan, Karan Singh and Phool Singh on payment for services rendered during the election, as is mentioned in most unambiguous terms both in these receipts and in

Part B of Form No. 26 is in clear violation of Rule 118, which lays down that no person other than, or in addition to, those specified in Schedule VI shall be employed for payment by a candidate or his Election Agent in connection with an election. For elections like the one in question, Schedule VI, permits the employment for payment by candidates or their Election Agents in connection with election, only one election agent, one Counting Agent, one messenger, one Polling Agent and two relief agents, and one additional messenger only at each Polling Station or booth. Schedule VI nowhere permits the employment for full one month or as a matter of fact, for any period, whatsoever, of servants like those employed by respondent No. 1 for cooking food etc., or for writing out slips or issuing *Parchis* or doing *Khidmatgari* work. It is admitted by R.W. 52 Karan Singh that he cooked for 40 to 50 persons daily, and by R.W. 58 Ram Charan that he did so for about 20 persons daily who came to Ujhani in connection with the election to the house of Chaudhri Gajraj Singh where the respondent No. 1 had one of his election offices. It is admitted by R.W. 66 Balwant that he did *Khidmatgari* work at the house of Maulvi Nihal Uddin R.W. 71 at Badaun where the respondent No. 1 had his other election office. R.W. 67 Phool Singh was employed at the house of Maulvi Nihal Uddin for writing out slips or issuing the *Parchis*. Besides him, the clerk Kishan Swarup Saxena, mentioned at serial No. 5 in Part B under the head "Expenses" in Form No. 26 (Ex. A-39) worked as a clerk of respondent No. 1 at the house of Chaudhri Gajraj Singh at Ujhani. R.W. 52 Karan Singh stated that besides himself and Ram Charan there were two more servants who used to do *Khidmatgari* work. R.W. 58 Ram Charan named one Onkar Singh as one of the persons working for the respondent No. 1, at the Kothi of Chaudhri Gajraj Singh and in the Ujhani circle. He also stated that one Sia Ram, the servant of Chaudhri Gajraj Singh, also worked as a cook in addition to himself and Karan Singh. There is, however, nothing on record to show that these persons were employed by respondent No. 1 for payment, and hence no significance can be attached to their employment. The respondent No. 1 has sought to meet this charge by stating that all these four persons were his private servants and it was not necessary to show their expenses in the petition. He admitted that Phool Singh also acted as a clerk, but denied that any of these four aforesaid persons were employed on payment for election purposes. In support of this plea he placed reliance on the statements of his uncle Chaudhri Ewaz Singh R.W. 46, and these four servants, viz. Karan Singh R.W. 52, Ram Charan R.W. 58, Balwant Kahar R.W. 66 and Phool Singh R.W. 67.

Chaudhri Ewaz Singh R.W. 46 stated that after the death of his elder brother Chaudhri Maikoo Lal, father of respondent No. 1, he became the Karta of the joint family consisting of himself and the respondent No. 1, and that he incurred the election expenses for the respondent No. 1 from the joint family funds as Rajeshwar Singh had no separate income of his own. He stated these four persons were from amongst the 15 persons employed by him in his village Mundha, and that he had deputed them to work in this election for his nephew respondent No. 1, but not specifically for election purposes. According to Chaudhri Ewaz Singh, Ram Charan was in their employment since 14 or 15 years, Balwant since 11 or 12 years and Karan Singh and Phool Singh since two years each. He stated that he was told by Sri Rajeshwar Singh on the 29th or the 30th September, 1954, that he (Rajeshwar Singh) had paid one month's salary to each of these four servants for one month's election work out of the money that he (Ewaz Singh) had given to him (Rajeshwar Singh) for purposes of the election; and hence these amounts were subsequently deducted by him from the salaries of these servants. He stated that he used to pay six months salary in advance to his servants in the months of Asarh and Aghan each year in conformity with a custom in his family of which Sri Rajeshwar Singh was not aware. Almost to the same effect are statements of these four servants in respect of their salaries and employment. He does not feel disposed to place any reliance on such evidence and have no hesitation in remarking that this is all an after thought and a plan to wriggle out of, and explain away the illegality committed by the respondent No. 1 in employing these persons in violation of Rule 118 mentioned above. In the first place the alleged custom to pay six months' salary of servants in advance is rather unusual and has not been sufficiently proved or established. Secondly no account books of the joint family or the business, which would indeed have been better and more reliable evidence have been produced before us. It is difficult to believe Chaudhri Ewaz Singh when he says that he keeps no account of his income and expenditure and makes no note of payments or advances made to servants or deductions to be made from their salaries and that he keeps a note of these things in his memory which must indeed be very remarkable. According to him, he was a zamindar paying a land revenue of Rs. 6,000/- before the abolition of zamindari and now owns 2,000 Bighas of cultivatory land and keeps 15 persons in his employment. He is contradicted on the point of maintenance of accounts by R.W. 58 Ram Charan,

the oldest servant of this lot, who stated that Chaudhri Ewaz Singh obtains receipts from him for the six months' advance salary and he also enters the payment in his account which he maintains. We, therefore, place no reliance on the oral testimony of these witnesses and our finding, therefore, is that all these four persons mentioned in Para. 1 of List VI were employed for payment by respondent No. 1 in his election in breach of the statutory provisions contained in Rule 118 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 and decide the point in favour of the petitioner and against the respondent.

*Para. 2 of List VI.*—To the petitioner's allegations in Para. 2 of List VI, the answer of the respondent No. 1 as set out in Para. 8 of his written statement coupled with the statement of his learned counsel made under Order 10 C.P.C. on 3rd June 1955 and that made by the respondent himself in his examination-in-chief in the witness-box is that he did not send for any person from outside Badaun for the purpose of working for him in the election and that though Acharya Kriplani and Dr. Ram Manohar Lohia, both Members of the P.S.P. had gone to Ujhani in September 1954 in the course of the usual tour which took place at the time of the election they did not go to Ujhani specifically for the purposes of his election campaign and that no other outsider came to Ujhani to make speeches or work in connection with his election to his knowledge; that he did not know of the 24 persons named in Para. 2 of List VI before the election, nor did he ask any such persons to do any work for him in the election, and lastly that he did not incur any expenditure on account of any of these persons.

It was, however, elicited in his cross-examination that at least 9, out of these 24 persons, besides Acharya Kriplani and Dr. Ram Manohar Lohia, shown at serial Nos. 1 and 2, had come from outside and on being asked by him they had told him that they had gone in his election and that Thakur Malkhan Singh, M.L.A., of Aligarh (shown at serial No. iii) had worked for him at the Husainpur Polling Station, and that Sri Fateh Bahadur Vakil of Bareilly (shown at serial No. XVI) had also come to Ujhani. On being confronted with the duplicates of Agent Form No. 6 the respondent No. 1 had to admit that the following seven persons also acted as his Polling Agents at the various Polling Stations in the Constituency, *viz.* :—

1. Sri Shamshi Minai, at serial No. v of List VI, Para. 2.
2. Sri Abdul Rauf of Bareilly, at serial No. vi of List VI, Para. 2.
3. Sri Ram Narain Tripathi, M.L.A. at serial No. viii of List VI, Para. 2.
4. Dr. P. C. Aron, at serial No. xii of List VI, Para. 2.
5. Sri Beni Prasad Madhav, at serial No. xiii of List VI, Para. 2.
6. Sri Bhola Singh, M.L.A., at serial No. xxii of List VI, Para. 2.
7. Sri Raj Narain, M.L.A., at serial No. xxiv of List VI, Para. 2.

For the rest in respect of whom there were the originals but not the duplicates of Agent Form No. 6 on the record, the respondent No. 1 said that they did not come to Badaun at all during the election. The plea of respondent No. 1 in regard to Acharya Kriplani and Dr. Ram Manohar Lohia finds some measure of support from R.W. 71 Maulvi Nihal Uddin, Advocate, Badaun, who in a very cautious and guarded statement said that in September 1954 the P.S.P., of which he is a Member, was making agitation against the raising of irrigation rates and in that connection Dr. Lohia had come to Badaun, had stayed at his place and addressed meetings at Badaun, Ramzanpur and Ujhani, all of which were attended by him and that in those addresses Dr. Lohia perhaps considered himself "too great a man" to mention poor Rajeshwar Singh and his election. As regards Sri Acharya Kriplani, Maulvi Nihal Uddin further said that Acharya Kriplani had also come to Badaun in connection with that agitation about that time, but in his addresses he made references to political matters of a very high nature and did not make any reference to the agitation regarding the irrigation dues enhancement, or to the election of Rajeshwar Singh which was pending at that time.

The petitioner, on the other hand, places reliance on the oral testimony of P.W. 37 Abdul Sayeed, P.W. 48 Magan Behari Lal, Railway Forwarding and Clearing Agent and P.W. 55 Asharfi Lal businessman, all three residents of Ujhani. They stated that they attended the meetings addressed by Acharya Kriplani on the Ramliila ground on the evening of 23rd September, 1954, presided over by Sri Deokinandan Chaubey, Secretary of the P.S.P. at Ujhani and the meetings addressed by Dr. Lohia in front of the house of Seth Banarsi Das Deo Kumar at Ujhani 5 or 7 days before the election. Of these three witnesses Abdul Sayeed could not remember any part of the addresses given by Acharya Kriplani and Dr. Lohia, but P.W. 48 Magan Behari Lal was definite that in the meeting



addressed by these leaders they all said that they were all formerly Congressmen but had left the Congress because the Congress had done things that were not right and that they had formed a P.S.P. Party which would work for the benefit of the public. Magan Behari Lal further stated that these leaders exhorted the people to support the P.S.P. and to vote for the P.S.P. Candidate and said that Sri Rajeshwar Singh (respondent No. 1) was formerly a Congressman but had left the Congress and was standing for election on the P.S.P. Ticket and that people should support the P.S.P. Almost to the same effect is the statement of the other witness P.W. 55 Asharfi Lal on this point. The learned counsel for the petitioner has also invited our attention to Ex. 113 which is a handbill in Hindi announcing to the citizens of Badaun district in general, and to the voters of the South-West Constituency in particular, the arrival of Acharya Kriplani on 23rd September 1954 and making a fervent appeal to them to collect in large numbers for his reception at the Ujhani Railway Station and in meetings to be addressed by him at Sheikhpur and at Ujhani. P.W. 48 Magan Behari Lal stated that these handbills were distributed freely amongst the public a day before the arrival of Acharya Kriplani at Ujhani. This handbill purports to have been printed by the Bhartiya Printers, Badaun, on behalf of Damodar Das Seth, Chairman Provincial P.S.P., Lucknow, and the learned counsel for the petitioner has argued vehemently that this is proof positive of the fact that Sri Acharya Kriplani came to Ujhani in connection with the election of respondent No. 1 and addressed meetings in support of his candidature and yet his travelling expenses have not been shown by respondent No. 1 in his Return of Election Expenses, Ex.A-39. In our opinion, however, it is unlikely that an elder and eminent Statesman and a ripe Parliamentarian of the calibre of Acharya Kriplani would have said or done anything that might have militated against the provisions of Election Law, Rules, or procedure. In the face of the statement of Maulvi Nihal Uddin, Advocate, we are inclined to hold that there is not sufficient evidence on the record to connect the visit of Acharya Kriplani wholly with the election of the respondent No. 1. The proprietor of the Press, Bhartiya Printers, Badaun, has not been produced before us and it has not been proved that the respondent No. 1 incurred the cost of the printing or publishing of this handbill. If, therefore, the respondent No. 1 failed to show this in his Return of Election Expenses, no adverse inference can be made against him. It was also suggested by respondent No. 1 that as a Member of Parliament Acharya Kriplani is provided with a free Pass to travel anywhere he likes and as such nothing would have been spent over his travelling expenses. There is force in this plea of the respondent No. 1 and on the evidence just discussed it would perhaps not be unreasonable to infer that no expense on travelling was incurred by respondent No. 1 over the visit of Acharya J. B. Kriplani.

The case of Dr. Ram Manohar Lohia is, however, slightly different. The respondent No. 1 has himself shown in Part E of Ex.A-39, the Return of Election Expenses, under the head "Cost of Printing" a sum of Rs. 16/- paid to Sri Abdul Rahim of Badaun on 11th September 1954 on account of "printing of pamphlets for Dr. Lohia"; and also in Part V under the head "Cost of Advertisement" Rs. 5/- paid on 19th September 1954 to Sri Riaz Ahmad of Badaun for Tonga in connection with Dr. Lohia's arrival and announcement and three other sums of Rs. 10/-, 150/- and 20/- respectively on 21st September 1954 and 22nd September 1954 on account of Loud-speakers in that very connection. It is, therefore, idle to pretend on the part of respondent No. 1 that Dr. Lohia's visit had nothing to do with his election. Dr. Lohia evidently came from outside and must have incurred expenditure in travelling to Badaun and Ujhani and as such his travelling expenses ought to have been shown in this Return of Election Expenses, and this not having been done the Return is evidently false.

Of the remaining nine persons who came from outside and seven of whom also acted as the Polling Agents of respondent No. 1 at various Polling Stations on the day of the poll, the respondent No. 1 has put into the witness-box only R.W. 62 Maulvi Abdul Rauf, Member of the District Board, Bareilly, and Editor of the "Musawat". Maulvi Abdul Rauf came into prominence by standing for election to the U.P. Legislative Assembly at the General Election of 1952 against Pandit Govind Ballabh Pant, the then Chief Minister of the Uttar Pradesh, from the Bareilly Municipal Constituency. Maulvi Abdul Rauf made a very confused and contradictory statement about his movements at Badaun and in its vicinity at the time of this bye-election in connection with the work of the respondent No. 1 and over the amount of expenses incurred by him in this connection. In his attempt to extricate himself from the very uncomfortable position into which he had voluntarily landed himself, he made confusion worst confounded. Maulvi Abdul Rauf is also alleged by P.W. 37 Abdul Sayeed, P.W. 48 Magan Behari Lal and P.W. 55 Asharfi Lal of Ujhani to have addressed public meetings at Ujhani in support of the candidature of respondent No. 1 about the same time when Acharya Kriplani, Dr. Ram Manohar Lohia and other leaders are alleged to have done so.

Maulvi Abdul Rauf said that he did not go to Badaun for purposes of the election but that on 24th September 1954 he had gone to the court of the Civil Judge, Badaun, to take back the Nikah Register filed by him, and that on that day he filled in the Agent Form on behalf of respondent No. 1 at the instance of Maulvi Nihal Uddin R.W. 71. He admitted to have worked on behalf of respondent No. 1 on the 24th, 25th and 26th September 1954 and to have addressed meetings at Ujhani and Ramzanpur during that period and to have acted also as the Polling Agent of the respondent No. 1 at Ramzanpur Polling Station, and said that he and Maulvi Nihal Uddin spent about Rs. 5/- or Rs. 6/- on his food and travelling expenses during the three days that he worked for respondent No. 1 in the election. Assuming that this sum of Rs. 5/- or 6/- only was incurred by him in connection with the work of respondent No. 1, its omission from the Return of Election Expenses makes the Return false. It may similarly be presumed that Sri Shamshi Minai and the other six persons, who admittedly reside outside Badaun District came from outside. They admittedly acted as the Polling Agents of respondent No. 1. Assuming that they bore their travelling expenses themselves, as the respondent No. 1 says he did not incur them, those expenses should also have been shown in the Return of Election Expenses as required by Para. 2(d) of Schedule IV read with Rule 112(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, and the omission of these items from Ex.A-39, the Return of the Election Expenses, makes that Return "false" in material particulars.

*Para. 3 of List V.*—In view of our finding on issue No. 5, that it was not established that motor vehicles were procured or hired by or on behalf of respondent No. 1 for the conveyance of the electors to and from Polling Stations, we hold that the Return of Election Expenses is not false on this account. Similarly, in the case of Shiam Sunder (R.W. 69), we hold, on the evidence on record, that he was not in the service of the respondent No. 1, but was employed only to take refreshments from the Hotel of his Master Prakash Chandra to Ujhani in a tonga to the house of Chaudhri Gajraj Singh for which an entry of Rs. 3/- has been shown in Part 'C' of Ex.A-39 and the Return is not false on this account.

Our finding therefore is that the Return of Election Expenses filed by the respondent No. 1, Ex.A-39, is false in the material particulars, mentioned above, and therefore a minor corrupt practice under section 124(5) has been committed by or on behalf of respondent No. 1, and we decide this issue in favour of the petitioner and against respondent No. 1.

*Issue No. 9(b).*—The return of Election Expenses is under the Representation of People Act to be made along with an affidavit filed before a Magistrate. Under clauses (1) and (2) of section 76 of the Act the return is to be signed by the candidate and his Election Agent and is to be lodged with the Returning Officer within a prescribed time, on a prescribed form. The return is to give the required particulars noted in that form and it must be accompanied by declarations made by the candidate and his Election Agent on oath or sworn affirmation. Section 77 of the Act prescribes the maximum scale of election expenses and the number and description of persons who may be employed for payment in connection with the election, while rule 112 of the form prescribed under rule 112(2) and given in Schedule IV of the Act is to specify the various particulars to be shown in the return. It is thus apparent that the law makes the filing of the return of election expenses a solemn affair and a candidate who acted as his own Election Agent, as the respondent No. 1 in the present case, must be saddled with full responsibility for the statements made by him in that return. The argument advanced on his behalf by learned counsel that the respondent No. 1 was a young man of little education, or that the election return was made up for him by some of his advisers, can be of no avail to him.

It appears from the statement of respondent No. 1 that he was not a resident of the South-West Badaun Constituency for which he offered himself as a candidate and that he was generally unknown to the residents of that Constituency except to some residents of the small village Khiria where he had certain relations. Even though without personal influence or high attainments his success at the election clearly suggests powerful supporters. The petitioner alleged that the two Bhadwar brothers who had been Chairmen of the local Municipal Board in succession and Sri Nihal Uddin, an advocate of Badaun who was himself unseated after his success at the General Election, were the chief supporters of the respondent No. 1. There is no doubt about Sri Nihal Uddin and Sri A. L. Bhadwar having supported the respondent in his candidature, though the other brother Sri P. L. Bhadwar has fought shy and has denied canvassing for the respondent No. 1 while admitting his sympathy in the cause of the respondent. With such supporters for his help the argument that the respondent No. 1 did not fully realise the importance of the return which he filed is clearly untenable.

We have the further statement of respondent No. 1 that he did not keep any account with the help of which he could have filed the return. The respondent No. 1 has shifted his position which he took up with regard to this return earlier. The return was made at a time when the dust of contest had not arisen between the parties. The statements in the return as also the receipts by the four servants filed along with that return are categorical that those servants were engaged for the purpose of the election only for a period of one month. This position was subsequently shifted to fit in with certain reported rulings (the Amethi case), and Ewaz Singh and the four so-called 'servants' were examined to state that they had merely been loaned to the respondent No. 1 for the election period. The respondent No. 1 thus led oral evidence to run counter to and to falsify his own return of election expenses which as we have already remarked above, is a document of importance which is expected to have been correctly made and on the contents of which the Tribunal is entitled to rely.

A false return of election expenses leads to the irresistible conclusion that the various items given therein are not reliable, while a correct return of election expenses is vital corroborative evidence to prove that the election has been free from corrupt practices. Since the return has been proved in the present case to be false this corroborative evidence to support the respondent No. 1 is lacking. The absence of a regular account maintained by the respondent No. 1, which was a statutory obligation on him, lends support to the petitioner's contentions about corrupt practices.

It has been urged on behalf of the respondent No. 1 that even if the return filed by him is held to be a false one, it is merely a minor corrupt practice under sub-section 4 of section 124 of the Act and that unless it is established that this affected the result of the election it can be of no help to the petitioner. The return, which is filed after the election is over, can hardly be said to materially affect the result of the election but under sub-section 7 of section 123 the incurring or authorising by a candidate of an expenditure, or employment of any person in contravention of the Act or any rule made thereunder is a major 'corrupt practice' and such major corrupt practice is sufficient to get an election declared void. We find no substance in the contention of the learned counsel for respondent No. 1 that the latter section ought to have been specified in the petition, for a party is to state the facts in his pleadings and it is for the court to apply the law. The Tribunal is in any case not debarred from dealing with the matter when it has come before it in the admissions of the respondent No. 1 himself.

We are, therefore, of opinion that whereas the respondent No. 1 deliberately filed a false return of election expenses, he was guilty of committing a minor corrupt practice under section 124 sub-section (4) of the Act. Further whereas the respondent No. 1 employed at least two servants in addition to the number which he was entitled to employ on payments; and thereby incurred expenditure in contravention of the provisions of the Act he was guilty of committing a major corrupt practice under section 123 (7) of the Act.

*Issue No. 4.*—It was alleged in Para. 5(b) of the Petition and the statement of the learned counsel for the petitioner on 3rd June 1955 that the respondent No. 1 himself and through his agents Sarv Sri Brij Ballabh of Bisoli, Qamaruddin of Ujhani, A. L. Bhadwar, Nihal Uddin and Lakshmi Kant, obtained as well as procured assistance for the furtherance of the prospects of the election from persons serving under the Government of India and the Government of Uttar Pradesh. In List No. II full particulars of nine such persons were given of whom two, viz. Tika Ram and Kadheram at serial Nos. 3 and 6 respectively were given up before the trial and Sri Pyarey Singh and Sri Arif Bux at serial Nos. 4 and 8, after the trial during the course of the arguments. Of the remaining five persons, Khoob Singh, Ujagar Singh and Davendrapal Singh are said to be Mukhias and Sri P. L. Bhadwar, a First Class Magistrate of Ujhani. They are all said to be under the authority of the U.P. Government. Qamarul Hasan, Branch Post Master, Ramzanpur, is said to be serving under the authority of the Government of India. All these five persons are alleged to have worked and canvassed for respondent No. 1 during the period of one month beginning from about 26th August 1954 at places noted against their respective names in the second last column of List No. II. The three Mukhias are said to have worked as Polling Agents also of the respondent No. 1, who, in Para. 4 of the additional pleas of his written-statement denied all these allegations and asserted that they were wrong and incorrect. Respondent No. 1 further averred that Khoob Singh was not a Mukhia. He admitted that Ujagar Singh and Davendrapal Singh were Mukhtars but the latter was under suspension. He pleaded they did not present themselves at the Polling Stations nor did they ever work or canvass for him, nor did they present any form of appointment before the Presiding Officers.

We will now take the case of each of these five persons separately in the order in which they are mentioned in List II.

**Khoob Singh (serial No. 1 of List No. II)**—He is alleged by the petitioner to have been the Mukhia (village headman) of village Bangawan and to have canvassed and secured votes for respondent No. 1 in his own village Bangawan and in the adjoining village of Ahirwara at which place he is also alleged to have worked as the Polling Agent of respondent No. 1. In proof of the fact that he was the Mukhia, the petitioner has not filed certified copy of any entry from the Register of Mukhias, as he has done in the case of the other two Mukhias, namely, Ujagar Singh and Davendrapal Singh, but he relies on an entry to that effect, dated 26th January 1952 purporting to have been made by S. I. Ram Naresh Sharma in Register No. 8 which is the village Crimes Note Book in respect of village Bangawan. This register was produced by P.W. 11 Sri Braham Dutt S. I. Ujhani. In this Register, which is said to be a confidential document, Khoob Singh is shown to have been appointed as Mukhia of Bangawan in succession to Gopal Singh, son of Pem Singh. It was, however, admitted by Sri Braham Dutt P.W. 11 that the order appointing Mukhias is received at the Police Station from the S.D.M. and then entry is made in Register No. 8 on the basis of that order, and reference to the order and its date are mentioned therein. But in the case of Khoob Singh no such reference to the order has been made in Register No. 8, and Sri Ram Naresh Sharma, the S.O., who made the entry has not been produced by the petitioner to explain this omission from the Register. We have carefully scrutinised Form No. 182 at Page 265 of the Police Manual Regulations and Orders corrected upto 31st December 1899, Volume II, in which this Register No. 8 which is the Register of villages is maintained at Police Stations along with other Books mentioned at Para. 8 of section XIII, at Page 633, of Volume I, but we have failed to notice any entry or column where the name of the Mukhia or village headman has to be entered in this Register. The respondent No. 1 has, on the other hand, referred us to Paras. 575 and 578 of Chapter XXXV under the head 'Village Headman' in the Manual of Government Orders of Uttar Pradesh, 1954 Edition, and has argued that the appointment of Village Headman, commonly known as Mukhia, is made by the District or the Sub-Divisional Magistrate for each inhabited village in the district and a Register of such Village Headmen or Mukhias is maintained by the Tahsildar in each Tehsil and each Police Station is furnished with a copy of the entries relating to villages within its jurisdiction. According to the learned counsel for respondent No. 1, the more authentic and reliable document to show whether a person is or is not a Mukhia of a certain village is the original or a certified copy of the order made by the District Magistrate or the Sub-Divisional Magistrate or of an entry from the Register of Village Headmen maintained by the Tahsildar and not the entry in the Police Register No. 8 which is a confidential record and of which no certified copy is issued to the public.

The respondent No. 1 has stated that he came to know from the village people that Khoob Singh was never a Mukhia at any time, and from inspection of the Tehsil records. The respondent No. 1 has examined R.W. 13 Sri Lajja Ram, Naib Nazir, Tehsil Badaun, who had brought with him the Register of Mukhias maintained at the Tehsil Badaun and by reference to which he made his statement. It appears from his statement that on 12th January 1948 the Patwari made an entry in the remarks column of that register in connection with village Bangawan, P. S. Ujhani, that Gopal Singh Mukhia had died and the case for Mukhiagiri was pending. There is no other entry in that register after 1948. It is obvious that the Tehsil staff failed to make necessary entry in the register when the successor of Mukhia Gopal Singh was finally appointed after the disposal of the case of Mukhiagiri. Under these circumstances the absence of any entry regarding the appointment of Mukhia cannot be construed to mean that no Mukhia was appointed nor can it be taken to be good evidence that Khoob Singh was not appointed Mukhia. Much water had flown under the bridges since 1948 and we have little reason to discard the subsequent entry in Register No. 8 of the Police Station that Khoob Singh became Mukhia in January 1952. Conversely there is no evidence to show that anyone else acted as Mukhia of that village after 1948 till 1955 when this office became effete and was abolished. For the petitioner, we have the statement of P.W. 4 Bhimsen, P.W. 36 Nathu Singh, a resident of village Bangawan itself, or P.W. 57 Nawab Singh who is himself a Mukhia and Panch that Khoob Singh had been acting as the Mukhia of Bangawan and that they saw him working for respondent No. 1 at the election. But for the formal absence of an appointment order of the Sub-Divisional Magistrate we find it proved from the evidence that Khoob Singh was working as Mukhia since over 2½ years prior to the bye-election and was treated as such by the police authorities and the village residents.

That Khoob Singh worked as the Polling Agent of respondent No. 1 at Ahirwara Polling Station is admitted by respondent No. 1 himself as well as by his witness

R.W. 55 Roshan Singh, at whose house at Ahirwara the Polling Station was situated. Roshan Singh stated in his examination-in-chief that on the date of the poll Khoob Singh was working as a Polling Agent of the P.S.P. (respondent's party) at one of the polling booths at Ahirwara Polling Station. The fact that he canvassed and secured votes for respondent No. 1 in villages Bangawan and Ahirwara is, in our opinion, sufficiently proved by the petitioner's witnesses referred to above. Their statements were corroborated by the statement of R.W. 55 Roshan Singh who stated in cross-examination that "Khoob Singh was outside the booth, he was simply verifying the *Parchis*..... He was putting on a red cap." The respondent No. 1 in Para. 4 of his written statement did not controvert the allegations made by the petitioner against Khoob Singh working for the former. He merely denied that Khoob Singh was a Mukhia at the time. In the same para. of the written statement when the respondent wanted to deny that certain persons had worked for him, he did so specifically. In connection with Pearey Singh, Davendrapal Singh and Ujagar Singh, he did not deny that they were Mukhias but only denied that they worked or canvassed for him and asserted that they did not present any form of appointment to the Presiding Officer. In respect of Qamrul Hasan, Arif Bux and Sri P. L. Bhadwar also, the respondent definitely asserted that they did not canvass or work for him or assist him in any way. It, therefore, appears that inasmuch as the respondent while denying that Khoob Singh was a Mukhia did not deny that the latter worked for him. There is intrinsic evidence in the written statement itself that Khoob Singh had worked and had canvassed for the respondent No. 1. Had he not so worked, the respondent No. 1 would have denied the allegation just as he had done for the other persons mentioned above.

*Ujagar Singh, Mukhia of village Piprol (serial No. 2 of List II)*—is alleged to have canvassed in villages Piprol and Hussainpur, 1½ miles from Piprol and also acted as the Polling Agent of respondent No. 1 at the latter place. That he is a Mukhia is proved by Ex.87, which is a certified copy of the entry No. 52 relating to him in the Register of Mukhias and is also not denied by the respondent No. 1. Further, that he initially agreed to work as the Polling Agent of respondent No. 1 at Hussainpur also known as Hussainpur Khera. Polling Station, is also proved by Ex. 144, which is Agent Form No. 6 signed both by Ujagar Singh and the respondent No. 1 on the 20th September 1954. What is, however, denied by the respondent No. 1 is the fact that Ujagar Singh presented himself at the Polling Station Hussainpur on the date of the poll and acted as the Polling Agent of respondent No. 1. The fact of his having canvassed and secured votes for him in villages Piprol and Hussainpur during the whole month preceding the election is also denied. For the petitioner, we have the evidence of P.W. 47 Rajju Singh, Mukhia of Hussainpur Khera, who stated that Ujagar Singh Mukhia had canvassed for the respondent No. 1 in his village. In his cross-examination he stated that he saw Ujagar Singh for the first time canvassing in his village 10 or 12 days before the election but he did not tell the petitioner or any of his workers that the Mukhias and Panches had come to him to canvass for his vote on behalf of the respondent, No. 1.

P.W. 56 Makkhan Lal of village Piprol stated that canvassing was done by Ujagar Singh in his village. The respondent No. 1 has met this evidence by examining R.W. 24 Laiq Singh, Pradhan of Piprol (who had worked for the petitioner in this bye-election). R.W. 26 Pearey Singh of Sawantinagla, R.W. 30 Lakhan Singh of Hussainpur. R.W. 36 Ved Singh (Agent of the petitioner at Hussainpur Polling Station), R.W. 37 Udaibir Sharma of Sikandrabad and R.W. 41 Brijpal Singh of Chanderpur. All these witnesses state that Ujagar Singh ~~was~~ working for the petitioner. When it is asserted by one party that a certain ~~person~~ had acted as the Polling Agent of the other on the date of the poll, and this is denied by the other party, the most reliable and the only ~~conclusive~~ evidence in proof of this fact is the duplicate copy of the letter of appointment in Form No. 6 of Schedule I, given to such Agent by a candidate under Rule 12 of the Representation of the People (Conduct of Elections and Election Petitions Rules) 1951, and signed, declared and delivered by such polling Agent before the Presiding Officer of the Polling Station on the date of the poll under sub-rule (3) of Rule 12. The oral testimony of any witness or even the original letter of appointment forwarded at least 3 days before the commencement of the poll by a candidate to the Returning Officer giving notice of such appointment under Sub-Rule (2) of the same Rule 12 mentioned above is rebuttable. In this case the duplicate of Form No. 6 in respect of Ujagar Singh appointing him as the Polling Agent of respondent No. 1 has not been produced before us and we may say that the fact of Ujagar Singh working as a Polling Agent of respondent No. 1 remains doubtful. But it is proved by the respondent's evidence itself that this Mukhia worked at the election though the witness throw him overboard as worker of the petitioner's party. No affinity is shown of this witness to that party and we find it difficult to believe that the

Mukhia would be taken on as a worker by the petitioner after having filed a Polling Agent form for the respondent No. 1.

Ex. 126 is a copy of a complaint filed by the petitioner before the Sub Divisional Magistrate, Badaun, complaining that certain Mukhias etc. had worked for the respondent No. 1 in the bye-election. Ex. 129 is a written statement filed by Ujagar Singh on 27th January 1955 in the proceedings that arose out of that complaint. Four other persons had also filed similar written statements in those proceedings. P.W. 54 Liladhar, petition-writer, has proved that he had scribed Ex. 129 at the instructions of Ujagar Singh and that it bears his signature. There thus appears to be no reason to doubt the testimony of Liladhar P.W. 54 on this point. In the written statement Ex. 129, Ujagar Singh had made an admission that they had worked for and acted as the Polling Agent of the respondent No. 1 in the bye-election.

Realising that the part taken by this Mukhia in the election for the respondent No. 1 was established beyond doubt, the latter produced oral evidence to allege that the Mukhia worked for the opposite party. No such allegation had, however, been made by the respondent in his written statement and we must decline to believe this oral evidence which has been set up as an after thought by the respondent. The argument urged for the latter that Ujagar Singh was not produced as a witness does not appeal to us at all as the petitioner was hardly likely to take such a risk, nor would the Mukhia like to take the risk of a criminal prosecution on his admissions in court. The respondent had an equal opportunity to produce this man as his witness but did not do so. We have already held on the finding on issue No. 3 that the letter Ex. 1 bears the signature of Ujagar Singh. Without accepting the contents of Ex. 1, the least that can be said on the basis of Ex. 1 is that this letter was written at the instance of Ujagar Singh and bears his signature and that it contains intrinsic evidence by way of an admission made therein by Ujagar Singh that he was working for respondent No. 1 and was exhorting others also to work for him.

In view of the circumstances and the evidence referred to above, we find that Ujagar Singh worked and canvassed for the respondent No. 1 at the election.

*Davendrapal Singh (serial No. 5 of List II)*—He is alleged to have been the Mukhia of Gidhol and to have canvassed at Gidhol and other villages and also to have acted as the Polling Agent of respondent No. 1 at Gidhol. That he was the Mukhia of Gidhol at the time of election and was not under suspension as is alleged by the respondent No. 1 is proved by Ex. 88 which is a certified copy of the entry at serial No. 168 relating to him in the Register of Mukhias and also by P.W. 12 Sri Brij Kishore Shukla, S.O. Allahpur, within whose circle Gidhol is situated. There is absolutely no evidence on behalf of the respondent No. 1 to show that he was under suspension at the time of the election. That at least he agreed to work as the Polling Agent of respondent No. 1 at Gidhol is also proved by Ex. 70 which is a certified copy of the Agent Form No. 6 signed both by him and respondent No. 1 bearing date 20th September 1954. The documentary evidence to prove that he actually worked as the Polling Agent of the respondent No. 1 on the date of the poll is lacking, as the duplicate of this form bearing his signatures for the 26th September, 1954, before the Presiding Officer has not been produced before the Tribunal. The petitioner, however, relies on the oral testimony of P.Ws. 33 and 52, viz. Ram Chandra and Makkhan Lal, both cultivators of Gurgawan in proof of the fact that Davendrapal Singh worked and canvassed for the respondent No. 1. Of these two witnesses, Ram Chandra had also filled in the Agent Form No. 6, Ex. A-7, for working as the Polling Agent of respondent No. 1 at Gurgawan Polling Station, but there is no duplicate of this form bearing the date 26th September 1954 and countersigned by the Presiding Officer of the Polling Station to show that he actually worked as a Polling Agent on the date of the poll. On the contrary, this form bears two dates, both of 20th September 1954 and two signatures of Ram Chandra, and a very confusing and contradictory statement is made by this witness in regard to this point in his cross-examination and re-examination from which it cannot be said with certainty that he really worked as the Polling Agent of respondent No. 1 at Gurgawan Polling Station, a fact not admitted on behalf of respondent No. 1. Ram Chandra says nothing about Davendrapal Singh's working as the Polling Agent of respondent No. 1 at Gurgawan on the date of the poll; and about canvassing he says nothing about the village Gurgawan, but about villages Natthu, Khirra, Pastor and Devani which are not mentioned in the petitioner's pleadings and which villages he alleges to have visited with Davendrapal Singh before the Election. The petitioner's allegations about other villages besides Gidhol is not admissible in evidence at all as it is not covered by the pleadings and cannot, therefore, be allowed. The other witness P.W. 52 Makkhan Lal speaks throughout his evidence about Dev Dutta Singh and not about Davendrapal Singh, and this mistake cannot be taken to be purely accidental as he repeats this mistake

not at one place but at all the five places where Davendrapal Singh's name crops up and it would be wholly unrealistic to minimise or underestimate the gravity or seriousness of this basic mistake. There is not a whisper in his evidence about Davendrapal Singh's working as the Polling Agent, and about canvassing he simply says that Dev Dutta Singh amongst others called him at the chaupal of Ram Chandra P.W. 33 mentioned above and exhorted him and others to vote for the Lal Topi. The respondent No. 1 on his side has examined R.W. 10 Brindaban, father of Ram Chandra P.W. 33 and R.W. 14 Khiali Ram, both of whom contradict P.Ws. 33 and 52. The credit of P.W. 33 is impeached on behalf of the respondent No. 1 on account of his being the caste fellow of the petitioner, which fact this witness admitted, and similarly the credit of R.W. 41 Khiali Ram is impeached by the petitioner on grounds of his being the caste fellow of respondent No. 1. In our opinion, there is no basis for this alleged partiality on the part of either of these two witnesses. However, on a careful examination of this evidence, we do not find it sufficiently convincing for holding that Davendrapal Singh either canvassed for or acted as the Polling Agent of respondent No. 1 at Gurgawan Polling Station on the date of the poll.

*Qamrul Hasan (serial No. 7 of List II)*—The allegation against Qamrul Hasan is that being the Branch Post Master at Ramzanpur serving under the Government of India, he canvassed in villages Ramzanpur, Midholi, Bhamuiya and Bhadruiya and procured votes for respondent No. 1 between the 26th August and 27th September 1954 like other persons mentioned in List II. That he was the Branch Post Master at Ramzanpur at the time of the election is not disputed and is proved by P.W. 25 Sri Jwala Shanker Johri, Accountant of Badaun Post Office who filed an abstract of Qamrul Hasan's service Ex. 5, which showed that Qamrul Hasan worked in the Post Office from 27th March 1934 as a part time employee and that his services were terminated on 26th March 1955. There is, no good evidence of his canvassing in villages Midholi, Bhamuiya and Bhadruiya and even that at Ramzanpur consists of the statements of two witnesses, viz. P.W. 17 Razi Uddin, a cultivator and P.W. 44 Altaf Gani, a Parchoonia, both of Ramzanpur. The evidence of P.W. 31 Pooran Singh is inadmissible as it is not in respect of any of the above-mentioned four villages but in respect of his village Asrasi, which is not covered by the petitioner's pleading. And for the same reason the evidence of P.W. 45 Hirey for his village Khitauli is also inadmissible. The evidence of the other two witnesses, viz. P.W. 8 Badruddin and P.W. 34 Inder Singh cited in this connection also has been discussed by us in our finding under Issue No. 5 on the alleged hiring and procuring of motor vehicles by respondent No. 1 on the date of the poll and we have given reasons there for discarding their evidence. The petitioner further did not produce Zamir Mian who, he alleged gave him information about Qamrul Hasan also. According to Razi Uddin, Qamrul Hasan who was his neighbour had asked him to work in the election on behalf of the Socialist Party on the evening before the election only and not on any other day between 26th August 1954 to 26th September 1954 as alleged by the petitioner. The evidence of the other witness Altaf Ghani is extremely vague and indefinite as he simply says that Qamrul Hasan and some others used to go round the village for votes for the Lal Topi. To whom they went and when they did so is left for others to surmise. Qamrul Hasan himself had entered the witness-box as R.W. 27 and denied on oath that he worked for any party in this election or canvassed with Razi Uddin and Altaf Ghani P.Ws. 17 and 44 respectively or even with P.W. 31 Pooran Singh of Asrasi and Hirey of Khitaulia, whose evidence we have held to be inadmissible. Qamrul Hasan has also given reasons for Razi Uddin and Altaf Ghani deposing against him. As regards Razi Uddin, he said that he was not on good terms with him before he and his son had filed several suits for arrears of rent against Razi Uddin and also got his crop attached before the abolition of *zamindari* on behalf of his sister whose tenant Razi Uddin was and whose affairs he and his sons were managing. About Altaf Ghani, Qamrul Hasan stated that he was on bad relations with him because Altaf Ghani P.W. 44 was twice prosecuted by the police for distillation of illicit liquor and he had given evidence against him in both those cases. Further that Fakhrul Hasan was his nephew and an Adalti Panch and that there was a case for theft against Ahmad, son of Altaf Ghani, in which the latter was fined Rs 60/-. All this may or may not be true because no such questions were put in the cross-examination on behalf of respondent No. 1 to either Razi Uddin or Altaf Ghani. Though several witnesses have deposed against Qamrul Hasan on behalf of the petitioner, for reasons given above, their evidence cannot be said to be beyond suspicion or free from technical objection as not covered by the allegation in the petition. We would, therefore, extend the benefit of doubt and hold that the allegation against Qamrul Hasan, Branch Post Master, canvassing for respondent No. 1 is not proved beyond all reasonable doubt.

*Sri P. L. Bhadwar (serial No. 9 of List II)*—The last person named in this List No. II is Sri P. L. Bhadwar and the petitioner's allegations against him were that

he was a 1st Class (Hony.) Magistrate at Ujhani serving under the authority of the U.P. Government, that between 26th August 1954 and 26th September 1954 he canvassed in Ujhani and the neighbouring villages of Bangawan, Gathona, Rano, Amrauli, Aroli, Manikpur, Sanjerpur, Shekhupur and Ramzanpur, the last nine villages being added in the statement of the learned counsel of the petitioner under Order X C.P.C. made on 3rd June 1955, that respondent No. 1 procured and obtained his assistance, that he (P. L. Bhadwar) organised his election campaign in Ujhani and the aforesaid nine neighbouring villages and gave his own jeep to respondent No. 1 for election work and that his house was used as the office of respondent No. 1, where his workers used to stay also.

To prove these allegations, the petitioner has examined altogether 10 witnesses. Of these, P.W. 14 Pooran Prakash, Clerk, District Board, Badaun, stated with reference to the Registrar of Trunk Calls maintained at the District Board Office, Ex. 86, that Sri Brij Ballabh, Member of the District Board, made about half a dozen trunk calls during the months of August and September 1954 from the Board's Office at Ujhani, and P.W. 16 Gokul Ram, another Member of the District Board, stated to have overheard one such trunk call made on 13th August 1954 in which it is alleged by Gokul Ram that Sri Brij Ballabh made a request to Sri P. L. Bhadwar to lend his support to the respondent No. 1 in opposition to the petitioner who was given the Congress Ticket in return for the help rendered by him earlier to Sri Bhadwar in his candidature for the Presidentship of the Municipal Board, Ujhani, in opposition to the petitioner. What in fact was the reaction of Sri Bhadwar to this request of Brij Ballabh is, however, not disclosed as the reply, if any, given by Sri Bhadwar could not be audible to Gokul Ram. The petitioner has next examined four witnesses in support of the allegation of Sri P. L. Bhadwar canvassing for respondent No. 1 at Ujhani. Of these, P.W. 3 Munna Lal, the Munim-cum-canvasser of truck No. UPM 1735 owned by his master Sri Sita Ram of Badaun stated that about 5 in the evening prior to the election he found Raja Ji (by which name Sri P. L. Bhadwar seems to have been popularly known at Ujhani and Badaun) asking the labourers of the Cotton Mill at Ujhani to vote for respondent No. 1 and also paying afterwards a sum of Rs. 185/- on account of the hire of three motor trucks to Sardar Taran Singh (R.W. 33) who had taken him to Ujhani for that purpose. Munna Lal professed to know Sri Bhadwar for 10 years past and yet did not know his full or correct name; nor was he able to give the names or residences of any of these labourers who were asked to vote for respondent No. 1 by Sri Bhadwar. We have discussed at some length the evidence of this witness in our findings under issue No. 5 on the use of motor trucks and have observed that this witness did not appear to us to be either impartial or truthful. He had been carrying loads for the petitioner for the last 7 years, and the absence of Sri Bhadwar from Ujhani on the evening prior to the election has been proved beyond doubt. Not much reliance, therefore, can be placed upon the evidence of P.W. 3 Munna Lal and it would be paying not at all a poor or undeserved compliment to characterise his allegations as fantastic nonsense.

P.W. 32 Mahesh Chandra, shop-keeper, with shops and residence both at Rauli and Ujhani admitted that he had known Raja Sahib (P. L. Bhadwar) for about two years only since the Municipal election and had no other dealing with him. The witness stated that he was canvassed to vote for respondent No. 1 by Sri P. L. Bhadwar at the shop of one Dalchand where he had gone with a cart-load of grain 8 or 10 days prior to the election. Dalchand has not been produced by the petitioner to corroborate Mahesh Chandra on this point. P.W. 37 Abdul Sayeed, thekedar of Ujhani, is also not telling the truth when he alleged that it was 2 or 3 days before the election that Sri P. L. Bhadwar had asked him for his vote not at his house but at the house of his uncle Fida Ahmad (R.W. 13), who has himself entered the witness-box and denied on oath these allegations of Abdul Sayeed. It has been proved beyond doubt that Sri P. L. Bhadwar was out of Ujhani between 20th and 26th September 1954 and therefore could not have asked Abdul Sayeed at Ujhani 2 or 3 days before the election for his vote. Further this witness had reason to depose against Sri P. L. Bhadwar as it has been proved by documentary evidence (*vide* the file of Abdul Latif and Abdul Sayeed produced by R.W. 12 Sri Johri Lal, Executive Officer, Municipal Board, Ujhani, at the time of his statement before the Tribunal on 8th September 1955) that Sri Bhadwar had cancelled his theka on 7th May 1954 which he had taken in partnership with his real brother, Abdul Latif. The evidence of this witness is, therefore not of much help to the petitioner.

The fourth witness about Ujhani is P.W. 40 Ram Richpal the alleged vendor of 10 Mds. of gram and 4 Mds. of Gur to Prakash Chandra four or five days before the election. This witness stated that Purshotam Lal Bhadwar had called him to the Mill and had told him that 10 Mds. of gram and 4 Mds. of Gur were required



for election purposes on behalf of respondent No. 1. It sounds rather ridiculous that the assistance or intervention of an influential man like Sri P. L. Bhadwar, who was both an Honorary Magistrate and Chairman of the Municipal Board, Ujhani, at the time of the election, was at all necessary to procure such common stuff as gram and Gur which is not alleged to have been either scarce or not easily available in sufficient quantity at the spur of the moment and therefore required placing an order sufficiently in advance. We are not prepared to attach any weight to such an absurd statement.

P.W. 7 Ram Singh and P.W. 20 Sher Ali are both for Sanjerpur. Of these, Ram Singh did not say a word about canvassing in his examination-in-chief but made a vague reference in his cross-examination to the effect that 8 or 10 days before the election Raja Saheb had come to him with respondent No. 1 and had asked for his vote and the statement of P.W. 20 Sher Ali is still more vague. All that he said was that at the election time Raja Saheb, mill owner and Chairman of the Municipal Board used to come from Ujhani with others to ask for vote. Who these others were, when did they come and for whom and to whom they asked for votes is not stated by this witness and no questions were put to him in this regard on behalf of the petitioner. He had not seen or met this Raja before the date of the alleged canvassing, though he had heard a lot about him prior to that. Not much reliance, therefore, can be placed upon the evidence of this witness also, as it appears that he never met or saw Sri P. L. Bhadwar upto the date of his deposition before the Tribunal. The evidence of the remaining two witnesses, viz. P.W. 21 Phool Singh and P.W. 30 Neksu Singh, both of Dahemo, is inadmissible, as both these witnesses allege canvassing by Sri P. L. Bhadwar in their own village Dahemo, not mentioned originally in the Petition nor included amongst the nine more villages specified on behalf of the petitioner on 3rd June 1955 at the commencement of the hearing. On behalf of the respondent No. 1 Sri P. L. Bhadwar has entered the witness-box (as R.W. 32) and in a spirited statement denied the allegations made on behalf of the petitioner, lock, stock and barrel. He is a man of education, being a non-practising Barrister and comes of a respectable family.

Sri Bhadwar denied on oath to have known respondent No. 1 before the election or any of the witnesses who have deposed against him except P.W. 37 Abdul Sayeed, real brother and partner of Abdul Latif, both of whom were Municipal contractors and used to do thekedari work in partnership when Sri Bhadwar was the President of the Municipal Board, Ujhani, from which post he voluntarily resigned in March 1955 when his brother Sri A. L. Bhadwar was elected President in his place. He has established by reliable evidence, both oral (*vide* R.W. 38 Sri S. L. S. Kumaiyan, Magistrate 1st Class, Badaun, and District Election Officer in this bye-election) and documentary, that about the time when he is alleged to have canvassed for respondent No. 1 at Ujhani and Sanjerpur he was elsewhere and could not possibly be present at those places. He had left for Delhi in his Car No. UPO 229 on the 20th September 1954 and had himself filled in and signed the form, original of Ex. A26, bearing the number of his car for its transhipment at Gajraula Railway Station. He returned from Delhi on September 22, 1954, and again booked the same car from Garh Mukhteshwar to Gajraula on the return journey and obtained its delivery at the Gajraula Railway Station. On return to Ujhani he found the letter Ex. A28 bearing the signatures of Sri Gahlaut, District Magistrate, Badaun, waiting for him as also the letter Ex. A29 from the Tube Well Executive Engineer. He left Ujhani on the evening of the 23rd September and arrived at Bilsa where he was posted by the District Magistrate for preservation of peace and order as there had admittedly been a Hindu-Muslim riot during Moharram 15 or 20 days before the election at village Nathua, about two miles in the vicinity of Bilsa. He remained at Bilsa upto the evening of 26th September 1954 and left Bilsa at about 7 p.m. that day, on the oral directions as he said of the District Magistrate, Badaun, granted at his own request to return to Ujhani on the 27th morning to find out whether the ballot boxes had all been received back, and if so, whether he could be relieved from duty on the 27th September 1954. From the 23rd September to 26th September 1954 he was thus continually at Bilsa and did not return to Ujhani and made relevant entry in the Visitor's Register at the Tube Well Inspection House at Bilsa, wherein he noted down time of his arrival and departure and the charges paid by him for his stay there. He admits to have received trunk calls from Sri Brij Ballabh from the office of the District Board, Badaun, but denies that they were in connection with the support to respondent No. 1 in opposition to the petitioner for the election, except the first one in which Brij Ballabh had enquired whether he was a candidate for this election and he said 'No'. In other calls, enquiry was made from him whether his brother Sri A. L. Bhadwar was at Ujhani as Brij Ballabh wanted to see him and the telephone at his brother's place was not installed till the end of September 1954. In cross-examination Sri P. L. Bhadwar admitted that R.W. 13

Fida Ahmad and R.W. 17 Rahim Bux were Municipal Commissioners and R.W. 64 Qamruddin, the Vice-President of the Municipal Board, Ujhani, when he was its President. He has also admitted that he was the Managing Director of the Card Can Manufacturing Ltd., which was an industry allied to the Textile Industry, the Factory of which was inside the premises of the Prem Cotton and Textile Mills but that it worked only for four years and was wound up 8 years back. He has further admitted to be on cordial terms with R.W. 16 Sia Ram of Ujhani to whom he gave a lift at the request of Sia Ram in his own car upto Bilsi for the marriage of Sia Ram's son and also picked the son from the Dharamshala where he was stopping and took him to the Baratghar where he also took his tea. This was, however, when he was going to Sahiswan on some work. Shown Ex. A28—Mr. Bhadwar admitted that the word 'Seen' written on this form was in his handwriting but he could not remember whether he had himself put up the date bearing 23rd September 1954 at the time when he wrote the word 'Seen'. At any rate he did not think that it was in his handwriting, but was sure that he must have written the word 'Seen' in the margin of this paper either on the evening of 22nd September or on the morning of the 23rd September 1954 before leaving for Bilsi and probably he omitted to put the initials below the word 'Seen' on this form. Sri P. L. Bhadwar has also admitted that his brother Sri A. L. Bhadwar was working for the P.S.P. in this election and that on the 22nd September 1954 he had left Ujhani for Badaun at 10 a.m. and attended his court at 10-20 a.m. and left it at 4-30 p.m. and returned home at 6-15 p.m.

The testimony of Sri P. L. Bhadwar has not at all been shaken in spite of a searching and lengthy cross-examination. Rather, it finds support from the testimony of no less than 10 witnesses including Sri Badan Singh, a Member of the Parliament and a Congressman, who has been produced on behalf of respondent No. 1. Of these R.W. 1 Sri K. L. Sharma, Goods Clerk, Gajraula, brought with him and produced from his custody before the Tribunal the original motor ticket No. 453, dated 20th September 1954 and the original motor register and motor delivery register kept at Gajraula Railway Station. Exs. A25, A26 and A27 are true copies of the receipt No. 453, dated 20th September 1954, the form of Parcel declaration Note, pasted to the back of this receipt showing that Sri P. L. Bhadwar, Magistrate 1st Class, Badaun, as the consignee of Car No. 229/DPO, and a true copy of an extract of the Motor Delivery Register respectively. From these documents it is clear that Sri Bhadwar booked his Car at Gajraula Station on the 20th September and took back its delivery on the 22nd September 1954 under ticket No. 2778 issued from Garhmukhteshwar Railway Station on the return journey. In cross-examination this witness admitted that Form Ex. A26 was not filled in his presence nor was the ticket Ex. A26 prepared in his presence, nor was the delivery of the car on 22nd September 1954 as entered in the original register Ex. A27 made in his presence; nor had he any personal knowledge regarding the putting of the car or its subsequent delivery. But he recognised and identified the handwriting of Sri C. P. Gupta, the A.S.M. of Gajraula by whom original receipt No. 453, dated 20th September 1954 was written, and Sri P. L. Bhadwar had admitted his signatures on the form of Parcel Declaration Note pasted at the back of this receipt. Sri Sharma also recognised and identified the signature of Sri O. P. Saksena, the A.S.M. on duty on the entry in the Motor Delivery Register. In our opinion all these entries have been sufficiently proved and there is no doubt about their genuineness. It is thus proved that Sri P. L. Bhadwar went to Delhi side on September 20, 1954 in his own car and made the return journey on the 22nd September 1954, back in the same car.

R.W. 4 Sri Anand Prakash Misra, Reader to Sri P. L. Bhadwar, brought with him the Guard File kept at the court of Sri Bhadwar containing amongst other papers Exs. A28 and A29 proved respectively to be the original letters of Sri Gahlaut, the District Magistrate, dated 18th September 1954, and of Sri Harbans Kishore, the Executive Engineer, Badaun, dated September 20, 1954, of Badaun to Sri P. L. Bhadwar. By the former Sri Bhadwar was posted as a Magistrate at Bilsi for the period 23rd to 29th September 1954 and by the latter the Executive Engineer permitted Sri Bhadwar to occupy the Dak Bungalow at Bilsi for the same period. This witness, no doubt, made a rather confusing statement about Ex. A28 the letter to Sri Bhadwar from the District Magistrate Sri Gahlaut. The date 23rd September 1954 endorsed on the margin of this letter signifying the receipt of this letter is indeed on the face of it overwritten and blurred and is rather suspicious. It also does not bear on it the signature of Sri Bhadwar who has however admitted that the word 'Seen' was written by him when he received this letter from the District Magistrate on the evening of the 22nd or on the morning of the 23rd September 1954 before he left for Bilsi and that he omitted to put the initials below the word 'Seen' on this form. A clumsy attempt, no doubt, seems to have been made by somebody in respect of the date

only, but so far as the genuineness of the letter and the posting of Sri Bhadwar to Bilsa for the period 23rd to 29th September 1954 is concerned, there is not the least doubt about it.

R.W. 5 is Sri Badan Singh, an old Congressman and the Member of the Parliament. He said that he was at Ujhani during the 10 or 15 days before the election in connection with the work of the petitioner and during the whole of that period he did not see Sri P. L. Bhadwar either working or canvassing for respondent No. 1, though he saw Sri A. L. Bhadwar, his brother, doing so. Almost to the same effect are the statements of R.W. 12 Johri Lal, Executive Officer, Municipal Board, Ujhani, and a former legal practitioner of Badaun who said that during the absence of Sri Bhadwar at that time Sri Har Narain, the Senior Vice-Chairman, acted for him till September 1954, and of R.W. 13 Fida Ali, the only thing against him elicited in his cross-examination was that as far as back as 1919 he had worked for 3 or 4 years in the gunny factory of Sri A. L. Bhadwar, the brother of Sri P. L. Bhadwar.

R.W. 19 Abdul Hamid, the kedar and cousin of R.W. 37 Abdul Sayeed and his brother Abdul Latif also said that Sri P. L. Bhadwar did no work in this bye-election, and R.W. 34 Sri Har Swarup Mehrotra, S.O., P. S. Bhamora, who in September 1954 was the S.O. at Bilsa and R.W. 38 Sri S.L.S. Kumaiyan, Magistrate 1st Class, Badaun, and the District Election Officer in this bye-election, both confirm on personal knowledge about the riot at village Nethua near Bilsa and the posting of Sri Bhadwar there at the time of this bye-election.

Lastly, R.W. 64 Qamar Uddin also denied on oath to have gone to Sri Bhadwar amongst others named on behalf of the petitioner with any person and to have ever asked Sri Bhadwar to work for the respondent No. 1 in this election as alleged by the petitioner. It is thus clear that there is no reliable evidence on behalf of the petitioner to show that Sri P. L. Bhadwar gave assistance or in any manner organised the election of respondent No. 1 in Ujhani or any of the neighbouring villages. Nor is there any evidence to show that Sri Bhadwar gave his own jeep for election work. There is further no evidence whatsoever to show that Sri Bhadwar ever permitted his house to be used as the office of respondent No. 1 or that any worker of respondent No. 1 used to stay there at any time during the election. Of the nine villages adjoining Ujhani which were not mentioned in the petition or in the list of particulars, but were subsequently added where Sri Bhadwar is alleged to have canvassed voters for respondent No. 1, there is very slight evidence and that too extremely vague and unconvincing about one place only, viz. Sanjerpur, and not at all about the remaining eight. At Page 104 of his cross-examination the petitioner gave quite a different set of the "neighbouring villages" of Ujhani where Sri P. L. Bhadwar is alleged to have worked for respondent No. 1, viz. (1) Mahi-Ka-Nagla, (2) Abdullaganj, (3) Achaura and (4) Fatehpur for which places there is no evidence at all and the evidence of the four witnesses about Ujhani did not at all impress us as impartial or independent. It may be that the witnesses examined for the petitioner have confused Sri P. L. Bhadwar with his brother Sri A. L. Bhadwar who admittedly worked for respondent No. 1.

It is also possible that the existence of jealousy between Sri P. L. Bhadwar and the petitioner was responsible for this wholesale colouring of the evidence by about a dozen witnesses produced by the petitioner. It seems that in the muddled politics of this bye-election Sri P. L. Bhadwar was sought to be made a scape-goat. The petitioner and Sri Bhadwar both are leading men and prominent citizens of Ujhani. They are close neighbours too, their houses being only about 300 yards apart and yet they are not on social terms, as is admitted by the petitioner himself. The petitioner asserts that Sri P. L. Bhadwar worked for respondent No. 1 at Ujhani but admits that he did not see him doing this. He said he made oral complaints of Sri Bhadwar's conduct to the District Magistrate. He summoned the latter as a witness but did not produce him before the Tribunal, thereby showing clearly that the District Magistrate was not prepared to support his assertion. He did not even remember whether these oral complaints were made by him to the District Magistrate before or after the election. He did not summon the written complaint alleged to have been made by him after the election. The appropriate Executive authorities were perhaps satisfied with the neutral attitude of Sri Bhadwar and therefore took no action to remove him from his office of 1st Class Magistrate. The petitioner has not produced Brij Kishore, Satya Narain, Dalchand and Ramjidas of Ujhani from amongst his supporters whom he named as having supplied this information regarding Sri P. L. Bhadwar's conduct. He does not even know when this information was conveyed to him by these informers and supporters. At Ujhani the petitioner got about 1700 more votes than respondent No. 1 in spite of this alleged influence of Sri P. L. Bhadwar. A close and dispassionate examination of the evidence relied upon by the petitioner

regarding Sri P. L. Bhadwar reveals it to be untrustworthy. None of the witnesses except Sri Pooran Prakash P.W. 14, whose evidence was merely formal, appeared to be impartial or unbiased. That the brother of Sri P. L. Bhadwar actively helped the respondent No. 1 and even advanced money to the latter for the election (as is given in the Return of Election Expenses) admits of no doubt. Even if due to petty family jealousies Sri P. L. Bhadwar had sympathy with the cause of the respondent No. 1, we are not inclined to hold affirmatively in favour of the petitioner, without good proof of his active personal participation in the election for the respondent.

We are convinced that the entire allegations regarding Sri P. L. Bhadwar have not been substantiated by cogent evidence and appear to be unfounded.

To sum up the above discussion, our finding on the first part of issue No. 4 is that Khoob Singh who has been proved to be Mukhia of Bangawan and Ujagar Singh who is admittedly the Mukhia of Piprol and a Panch of Kachla Panchayati Adalat, both worked and canvassed for the respondent No. 1. The effect of this finding is to render the election void. It has been held by the Supreme Court in *Ranaujaya Singh Vs. Baijnath Singh* and others (reported in U.P. Government Gazette, dated 8th January 1955, in Part VII at Page 50) that Mukhias are Government servants within the meaning of section 123(8) Explanation (b). The procurement of the services of these two Mukhias by the respondent No. 1 for the furtherance of his election amounts to a major corrupt practice under section 123(8) of the Act which is sufficient to render the election void.

*Issue No. 10.*—There is no affirmative evidence for the respondent No. 1 that he took care or issued directions to his workers to prevent the commission of corrupt or illegal practices at the election except the solitary statement of Maulvi Nihal Uddin, R.W. 71, on the point. The latter stated—

“Before the election I had called meetings of workers for Rajeshwar Singh, 2 or 3 days before the day of the election. In that meeting I gave the workers the usual instructions which are provided in the rules. I told them that they should not exercise undue pressure on the voters or bribe anyone or exercise any undue influence on anyone etc., etc. As a matter of fact I translated the Election Rules on the points in Urdu and explained them to the workers.”

None of the witnesses examined for the respondent No. 1 corroborate this. The respondent No. 1 himself has not asserted that he enjoined his workers to take such precautions against corrupt practices, and we cannot but view this gallant attempt of R. W. Nihal Uddin, who was the last witness examined for the respondent to come to the help of the latter in his predicament with some amusement. We have held under issue No. 7 (a) above that Panches and Sarpanches had canvassed for the respondent No. 1. The latter was his own Election Agent and it has therefore to be assumed that, either he himself, or his trusted workers on his behalf, had procured the services of Mukhias, Sarpanches and Panches for canvassing for him. It is, therefore, apparent that the respondent No. 1 himself or his workers indulged in this corrupt practice. Had the respondent taken reasonable means and care and given proper directions in this regard his workers would not have procured the services of Mukhias, Panches and Sarpanches for canvassing for the election of the respondent No. 1. It is, therefore, apparent that the respondent No. 1 did not exercise due care or given necessary instructions in this behalf.

Further the very fact that the respondent No. 1 himself employed, for payment, more servants or messengers than he was entitled to make use of under the rules, itself goes to show that he did not exercise due caution and himself deliberately contravened rules and committed corrupt practices. We, therefore, decide this issue against the respondent No. 1.

*Issue No. 11.*—It has been held by us above in the finding on issues Nos. 4 and 7(a) and (b) that the respondent No. 1 was guilty of committing major corrupt practices under section 123(8) of the Act and we have held on issues Nos. 9(a) and (b) that he was guilty of committing a minor corrupt practice under section 124(4) and also a major corrupt practice under section 123(7) of the Act. Under the circumstances the election of the respondent No. 1 is void and is liable to be set aside. The issue is decided accordingly.

*Issue No. 12.*—The charge was made in the Petition that the respondent No. 1 had committed corrupt and illegal practices. We have found in the findings to issues Nos. 4, 7 and 9 that the respondent No. 1 committed the major corrupt

practice under section 123(8) of procuring the services of Mukhias, Panches and Sarpanches for canvassing for him; and the major corrupt practice under section 123(7) of employing for payment more servants or messengers than he was entitled to under the rules; and he further committed the minor corrupt practice under section 124(4) of submitting a false return of election expenses. Under issue No. 10 we have held that the respondent No. 1 himself deliberately contravened rules and committed corrupt practices. This Tribunal must, therefore, declare the election of the respondent No. 1 to be void.

We are recording a finding that the respondent has been guilty of certain corrupt practices. The proviso to section 99. R.P. Act, 1951, lays down that, "no person shall be named in the order under sub-clause (ii) of clause (a) unless he has been given notice to appear before the Tribunal and to show cause why he should not be so named." This proviso is based on the principle that no person should be condemned without giving him a hearing. In the present case charges of corrupt practices were made in the election-petition against Sri Rajeshwar Singh, respondent No. 1. He filed a written-statement, contested the election petition and himself entered the witness box. The respondent was fully aware of the charges made against him. He had full opportunity to show before this Tribunal that the charges were not well founded. In these circumstances, it seems unnecessary to issue a fresh notice to Sri Rajeshwar Singh under the proviso to section 99 R.P. Act, 1951.

Before parting with the case we may note that no less than half a dozen applications had been made for adjournment of the proceedings at various stages by the respondent No. 1, and he was accommodated by the Tribunal on several dates. This considerably delayed the proceedings which covered a period of about eight months with sittings extending to 41 working days. The contention repeatedly advanced for the petitioner that the respondent, the sitting Member, was interested in delaying the proceedings was not without force. In view of the protracted proceedings in the case, we assess the costs payable by the respondent No. 1 to the petitioner at Rs. 800.

#### ORDER

The election petition is allowed. Under section 100(2) (b) R.P. Act, 1951, we declare the election of Sri Rajeshwar Singh, respondent No. 1, to the Uttar Pradesh Legislative Assembly from the South-West Badaun Constituency at the bye-election held in September 1954 to be void.

Under section 99 R.P. Act, 1951, we record that the following corrupt practices have been proved to have been committed by Sri Rajeshwar Singh, respondent No. 1:—

- (1) the major corrupt practice under section 123(8) R.P. Act, 1951;
- (2) the major corrupt practice under section 123(7) R.P. Act, 1951, read with rule 118 and Schedule VI of R.P. Rules, 1951, and
- (3) the minor corrupt practice under section 124(4) R.P. Act, 1951.

Sri Rajeshwar Singh, respondent No. 1, shall pay to the petitioner Rs. 800 as costs. The petitioner is entitled to obtain a refund of his security deposit.

*The 29th February 1956.*

(Sd.) G. M. FRANK AGARWAL, *Chairman.*

(Sd.) J. K. KAPOOR, *Advocate Member.*

(Sd.) H. P. VARSHNI, *Judicial Member.*

Judgment signed, dated and pronounced to-day in open court.

*29th February 1956.*

(Sd.) G. M. FRANK AGARWAL, *Chairman.*

(Sd.) H. P. VARSHNI, *Member.*

(Sd.) J. K. KAPOOR, *Member.*

[No. 82/31/54/4439.]

By order,

P. S. SUBRAMANIAN, *Secy.*

